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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 563

GREAT NORTHERN RAILWAY COMPANY,
PETITIONER,

vs.

DELMAR COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 24, 1930

CERTIORARI GRANTED JANUARY 19, 1931

(35,485)

(35,485)

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

DELMAR COMPANY, Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, Defendant

COMPLAINT

Plaintiff for its complaint alleges:

(1) That the Delmar Company is, and at all times hereinafter mentioned was, a corporation duly organized under the laws of the State of Delaware, with its principal office in the City of Minneapolis, Minnesota.

(2) That the Great Northern Railway Company is, and at all times hereinafter mentioned was, a corporation duly organized and authorized to operate, and was operating, a system of railroads within the States of North Dakota, South Dakota, Wisconsin and Minnesota and other territory, as a common carrier, and subject to the rules and regulations of the Interstate Commerce Commission.

(3) That the Delmar Company was engaged in the business of buying and selling grain in the City of Minneapolis for some time prior to the year 1922 and including the year 1927; that during said period said Delmar Company made certain shipments via the Great Northern Railroad, and that on such shipments said Great Northern Railway Company charged unlawful, unreasonable and discriminatory rates therefor.

(4) That on or about the 4th day of December, 1924, Delmar Company filed a complaint with the Interstate Commerce Commission against the Great Northern Railway Company, which proceedings were known as Docket No. 165761 of the Interstate Commerce Commission Records; that said proceedings were duly heard, and on the 10th day of January, 1927, an order issued by the Interstate Com-
[fol. 2] merce Commission, wherein it was found that the complainant made shipments over the Great Northern Rail-

road and paid the charges thereon, and that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the applicable rate, and that it was entitled to reparation with interest.

(5) That thereafter and on the 10th day of October, 1927, the Interstate Commerce Commission issued its further order in said matter as follows:

"It is therefore ordered, That the above named defendant be, and it is hereby, authorized and directed to pay unto complainant Delmar Company, on or before November 25, 1927, the sum of $648.84, with interest thereon at the rate of six per cent per annum from September 15, 1922, as reparation on account of inapplicable rates charged for the transportation of numerous carload shipments of grain from points in North Dakota, South Dakota and Minnesota to Superior, Wis."

(6) That the shipments involved, including date of shipment, car number, origin, destination, rate charged and overcharge, under and pursuant to said proceedings before the Interstate Commerce Commission and the order thereon, are listed in Exhibit "A", which is hereto attached and made a part hereof.

(7) That the said Great Northern Railway Company did not pay said sum as ordered by the Interstate Commerce Commission, and has never paid the same; and that there is due and payable to the plaintiff herein the sum of $648.84, with interest thereon from the 15th day of September, 1922.

Wherefore, Plaintiff demands judgment against the defendant herein for the sum of $648.84, with interest thereon from the 15th day of September, 1922, and for its costs and disbursements, and, in addition thereto, attorneys' fees as provided by the statute in such cases.

Shaw, Safford, Putnam & Shaw, Attorneys for Plaintiff, 826 First National-Soo Line Bldg., Minneapolis, Minnesota.

[fols. 3 & 4] *Duly sworn to by Fred W. Putnam. Jurat omitted in printing.*

(Here follows Exhibit "A" to Complaint, side folios 5 and 6)

[fols. 5 & 6]

EXHIBIT "A" TO COMPLAINT

Claim of Delmar Co., Minneapolis, Minn., under Decision of the Interstate Commerce Co

Date of shipment	Date of delvy. or tender of	Date charges were paid	Car Int.	Car No.	Origin	Destination	Route	Commodity
6/1 /1922	6/12/1922	6/20/1922	GN	11559	Albee, SD	Superior, Wis.	GN-Ry.	Corn
8/23 "	8/31 "	9/1 "	GN	24717	Burch, SD.	"	"	Wheat.
8/21 "	9/6 "	9/7 "	GN	127839	" "	"	"	"
8/31 "	9/15 "	9/16 "	GN	24799	Grover, SD.	"	"	"
9/4 "	9/15 "	" "	GN	34672	" "	"	"	"
8/22 "	9/11 "	9/12 "	GN	17426	Plana, SD	"	"	"
8/26 "	9/15 "	9/16 "	Penn	22491	Putney, SD.	"	"	"
8/22 "	9/11 "	9/12 "	GN	16337	" "	"	"	"
8/19 "	9/11 "	" "	GN	122761	" "	"	"	"
8/26 "	9/7 "	9/8 "	GN	18690	" "	"	"	"
8/25 "	9/7 "	" "	GN	124011	" "	"	"	"
8/28 "	" "	" "	GN	123988	" "	"	"	"
8/26 "	9/12 "	9/15 "	GN	205070	" "	"	"	"
5/27 "	6/7 "	6/8 "	GN	505918	Sheffield, "	"	"	Corn
8/21 "	9/6 "	9/7 "	GN	16563	Rauville, "	"	"	Wheat.
8/31 "	9/13 "	9/14 "	GN	121211	Tacoma Park, SD	"	"	"
8/21 "	9/11 "	9/12 "	GN	300101	" " "	"	"	"
9/1 "	9/13 "	9/15 "	GN	34719	Willow Lake, "	"	"	"
7/28 "	8/9 "	8/10 "	GN	125360	" " "	"	"	Corn
7/10 "	7/25 "	7/26 "	GN	124650	" " "	"	"	"
7/11 "	7/25 "	7/26 "	GN	126213	" " "	"	"	"
9/11 "	9/22 "	9/22 "	CP	290056	Holloway, Minn.	"	"	Oats
6/23 "	7/5 "	7/6 "	GN	23219	Appleton, "	"	"	Corn
7/24 "	8/1 "	8/1 "	GN	13923	Litchfield, "	"	"	"
8/30 "	9/11 "	9/12 "	WP	15167	Rogers, "	"	"	Rye
8/31 "	9/15 "	9/16 "	GN	207182	Howes Siding, ND.	"	"	Wheat.

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.
Great Northern Railway Co., Defendant, by —— ——.

Endorsed: Filed Oct. 8, Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

Del

EXHIBIT "A" TO COMPLAINT

eapolis, Minn., under Decision of the Interstate Commerce Commission under Docket No. 16576

Origin	Destination	Route	Commodity	State weight	Rate as charged	Amount as charged	Rate should be	Amount should be	Overcharge reparation
					Total				
	Superior, Wis.	GN-Ry.	Corn	94340	13–6–19	$179.24	17½	$165.09	$14.15
	"	"	Wheat	79630	20½–6½ 27	215.	22½	179.17	35.83
	"	"	"	82310	" " "	222.24	"	185.20	37.02
	"	"	"	85910	19½–6½ 26	223.38	24½	210.48	12.90
	"	"	"	86410	" " "	224.67	"	211.70	13.97
	"	"	"	88510	21–6½ 27½	243.40	24	212.42	30.98
	"	"	"	84560	" " "	232.54	24	202.94	29.60
	"	"	"	94140	" " "	258.88	24	225.94	32.94
	"	"	"	89340	27–6½ 33½	299.29	24	214.41	84.88
	"	"	"	97470	21–6½ 27½	268.05	24	233.93	34.12
	"	"	"	87860	" " "	241.62	"	210.86	30.76
	"	"	"	90720	" " "	249.48	"	217.73	31.75
	"	"	"	72490	" " "	199.34	"	173.98	25.36
	"	"	Corn	61110	19–6 25	152.78	"	146.66	6.12
	"	"	Wheat	99600	18–6½ 24½	244.02	23	229.08	14.94
SD	"	"	"	89710	21–6½ 27½	246.70	24	215.30	31.40
"	"	"	"	87460	" " "	240.52	"	209.90	30.62
"	"	"	"	98210	20–6½ 26½	260.25	24½	240.61	19.64
"	"	"	Corn	93440	18–6 24	224.25	22	205.57	18.68
"	"	"	"	88570	" " "	212.57	"	194.85	17.72
"	"	"	"	87960	" " "	211.10	"	193.51	17.59
nn.	"	"	Oats	75000	11½–6 17½	131.25	15½	116.25	15.00
"	"	"	Corn	69110	" " "	120.95	16	110.58	10.37
"	"	"	"	74320	8½–6 14½	107.75	14	104.05	3.70
"	"	"	Rye	67650	6½–6 12½	84.56	12	81.18	3.38
ND.	"	"	Wheat	69870	17½–6½ 24	176.69	17½	122.27	45.42
									648.84

ainst the records of this company and found correct.

Deputy.

Delmar Company, Claimant, by —— ——, 502 Flour Exchange, Minneapolis, Minn.



[fol. 7] IN UNITED STATES DISTRICT COURT

ANSWER—Filed Oct. 26, 1928

Defendant for its answer to the complaint in the above entitled case alleges:

I

Admits the allegations contained in paragraphs 1 and 2 of the complaint.

II

Admits the allegations contained in that portion of paragraph 3 of the complaint down to and including the words "made certain shipments via the Great Northern Railroad" but denies the allegations contained in the balance of said paragraph 3.

III

Admits the allegations contained in paragraphs 4 and 5 of the complaint.

IV

Admits the allegations contained in paragraph 6 of the complaint but, except as admitted in paragraph VI hereof, denies the correctness of the facts stated and contained in columns headed "Rate should be" "Amount should be", and "Overcharge reparation", contained in Exhibit "A" attached to said complaint and referred to in paragraph 6 of the complaint.

V

Denies the allegations contained in paragraph 7 of the complaint.

VI

Admits the correctness of the facts stated in Exhibit "A" specifically relating to car No. 13923 originating at Litchfield, Minnesota, and car No. 15167 originating at Rogers, Minnesota, and specifically that the amounts as charged constituted overcharges with the respect to these two particular cars in the amount of $3.70 and $3.38 respectively, as set forth in said Exhibit "A" and defendant hereby makes offer of judgment in the amount of $7.08, the total amount of the overcharge of said two cars.

VII

Except as herein specifically admitted, defendant denies each and every allegation, matter of fact and thing contained in said complaint.

[fol. 8] VIII.

Further answering, defendant alleges that the rates as charged and the amounts as charged as indicated in columns so designated in said Exhibit "A" attached to said complaint were, with the exception of rates and amounts applicable to cars Nos. 13923 and 15167 referred to hereinbefore in paragraph VI of this answer, the applicable rates and charges under tariffs duly filed and published by defendant according to law.

Wherefore, defendant demands judgment against defendant, but only in the amount hereinbefore specifically admitted, that is $7.08, and that otherwise the complaint be dismissed and that defendant have its costs and disbursements.

F. G. Dorety, R. J. Hagman, Fletcher Rockwood, Attorneys for Defendant, 1120 Great Northern Building, St. Paul, Minnesota.

Duly sworn to by F. L. Paetzold. Jurat omitted in printing.

(Endorsed): Due and personal Service of the within is hereby admitted this 22nd day of October, 1928.

Shaw, Safford, Putnam & Shaw, Attys. for Plaintiff.

[File endorsement omitted.]

[fol. 9] In United States District Court

Reply—Filed Feb. 13, 1929

Plaintiff for its reply to the answer of the defendant herein:

Denies each and every allegation contained in said answer, except as said allegations admit the allegations of the complaint herein.

Wherefore Plaintiff prays judgment as in its complaint demanded.

Shaw, Safford, Putnam & Shaw, Attorneys for Plaintiff, 826 First National Soo Line Bldg., Minneapolis, Minnesota.

Duly sworn to by Fred W. Putnam. Jurat omitted in printing.

Endorsed: Service of the within Reply by delivery of copy thereof at St. Paul, Minn., admitted this 29th day of October, 1928. F. G. Dorety, R. J. Hagman, Fletcher Rockwood, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 10] IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING JURY—Filed April 19, 1929

The parties to the foregoing-entitled cause do hereby stipulate that a jury may be waived in said case, and that the same shall be submitted to the Court without a jury.

Shaw, Safford, Putnam and Shaw, Attorneys for Plaintiff. R. J. Hagman, J. H. Mulally, Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF TRIAL—April 19, 1929

April Term, 1929. Before Judge John B. Sanborn

The above entitled action came on this day to be tried to the Court without a jury, trial by jury having been expressly waived by stipulation filed herein; Messrs. Shaw, Safford, Putnam and Shaw appearing as attorneys for the plaintiff and Messrs. R. J. Hagman and J. H. Mulally appearing as attorneys for the defendant herein.

Mr. Putnam opens and states the case to the Court on the part of the plaintiff.

Here the plaintiff rests its case.

Prescott B. Beidelman is sworn, is examined and testifies as a witness on the part of the defendant.

Here the defendant rests its case.

Said action is submitted to and taken under advisement by the Court, plaintiff to file written memorandum twenty days from this date, defendant to file its reply memorandum ten days thereafter.

IN UNITED STATES DISTRICT COURT

OPINION—Filed Aug. 8, 1929

This cause came on to be tried on April 19, 1929, before the court, without a jury, a jury having been, by stipulation of the parties, waived.

Shaw, Safford, Putnam & Shaw, and Sam W. Campbell, of Minneapolis, appeared for the plaintiff; and F. G. Dorety, R. J. Hagman and J. H. Mulally, of St. Paul, for the defendant.

[fol. 11] The case involves the interpretation of a tariff filed by the defendant with the Interstate Commerce Commission. The facts are undisputed, and the only question involved is one of law.

The plaintiff brought this action against the defendant to recover $648.84 and interest, the amount of alleged excessive charges collected by the defendant in transporting twenty-six carloads of grain during the period from April 27, 1922, to September 11, 1922.

The shipments all originated at numerous points on the Great Northern in Minnesota, North Dakota, and South Dakota, were consigned by various shippers to Minneapolis, and, after arrival at Minneapolis, were reconsigned by the plaintiff in the same cars to Superior, Wisconsin, where delivery was made. The entire transportation was over the rails of the defendant. The defendant collected its local rate applicable from the country station to Minneapolis, plus its proportional rate applicable from Minneapolis to Superior. These combinations of rates were higher than the rates which the defendant's tariff specified for trans-

portation of grain from the country stations to Superior. It is the difference between the rate charged and the through rate for which the plaintiff sues.

On December 4, 1924, the plaintiff filed a complaint entitled "Delmar Company, Complainant, vs. Great Northern Railway Company, Defendant", Docket No. 16,576, before the Interstate Commerce Commission, by which it sought reparation for the same alleged excessive charges. Issues were joined in that proceeding and on January 10, 1927, the Commission issued it- report 120 I. C. C. 530), in which it found that the rates named in the defendant's tariff for transportation from the country stations to Superior were applicable via the longer route through Minneapolis, and on October 10, 1927, entered its order requiring the defendant to pay the plaintiff $648.84 with interest from September 15, 1922, as reparation "on account of inapplicable rates charged". The defendant declined to pay the reparation, and thereupon the plaintiff instituted this suit.

The plaintiff's contention is that the defendant's rate from the country stations in question to Superior applied via Minneapolis, although that was the longer route, because the tariff did not expressly restrict the application of the rate to the shorter and more direct route.

[fol. 12] The defendant's contention is that the rate published for transportation from these stations to Superior applied only over the direct and shorfer route, and not via the longer route through Minneapolis, over which these shipments moved.

The tariff naming the rate from the stations in question to Superior, at the time of these shipments, was silent as to the route over which the rate would apply, although it has since been changed so as to exclude the route through Minneapolis upon the through rate.

The defendant bases its contention on two propositions:

(1) That, under the law, where a tariff fails to state over what route a through rate is available, the law will imply that the rate applies to the shortest, most direct route.

(2) That, if it should be held that the through rate applied to these shipments, it would produce an unlawful result, because it would then appear that, under the defend-

ant's tariff, a greater charge was made for a shorter than for a longer haul; an example of which would be that there would be a higher rate from Howes, North Dakota, to Cambridge, Minnesota, than from Howes to Superior.

The defendant, in support of its contentions, cites paragraph (1) of Section 6 of the Interstate Commerce Act (49 U. S. C. A. §6) which requires carriers to file with the Commission and publish tariffs showing their charges "for transportation between different points" upon their lines, and paragraph (7) of the same section, which forbids any carrier to "extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs." It is claimed that to permit one shipper to bill his grain to Minneapolis, the primary grain market, on an indirect route, and to there sell it and have it reconsigned to Superior, would be granting privileges or facilities greater than permitted to a shipper who forwarded his grain on a through bill of lading to Superior.

The evidence here and before the Commission indicated that the practice of the defendant was to move all grain billed to Superior over the shorter, more direct route.

Were this a case of first impression, it would seem as though the contention of the defendant should be sustained. In the absence of any restriction as to route, common sense would seem to indicate that the tariff referred to the natural [fol. 13] and direct route, and did not extend to shippers the privilege of using a longer and more circuitous route. The routes from the stations in question to Superior via Minneapolis were from 12% to 23% longer than through Willmar, and moreover involved transporting these cars through crowded terminals. Obviously, the transportation service rendered by the railroad was greater than it would have been had the cars moved by the shorter route. However, it appears that the Interstate Commerce Commission has, for a considerable time, held that if it is a carrier's purpose to restrict the application of a rate to any particular route, and any reconsigning privileges authorized in connection therewith to any particular point, that must be done by clear and unequivocal language. Van Dusen Harrington Co. vs. C. M. & St. P. Ry. Co., 47 I. C. C. 59; Meeds Lumber Co. vs. Director General, 59 I. C. C. 243;

Freeman Grain Co. vs. Director General, 68 I. C. C. 559; Pioneer Lumber Co. vs. Director General, 74 I. C. C. 288; Baker-Reid Lumber Co. vs. B. & O. R. R. Co., 74 I. C. C. 489; Richardson Sand Co. vs. Director General, and C. & N. W. Ry. Co., 89 I. C. C. 555; Scott County Farm Bureau vs. A. & V. Ry. Co., 101 I. C. C. 357; Brown-Hinton Wholesale Grocery Co. vs. G. N. Ry. Co., 102 I. C. C. 237; Delmar vs. G. N. Ry. Co., 120 I. C. C. 530; Thames vs. Southern Ry. Co., 128 I. C. C. 508; Northwestern Fruit Exchange vs. G. N. Ry. Co., 128 I. C. C. 538.

I do not understand that the Commission has held that, where a through rate is published without restricting the movement to any particular route, a shipper may use any route, no matter how circuitous. In their reports, in referring to the routes in controversy, they have used the words "workable", "reasonable", "available" and "not out of route movement".

In the case of Delmar Co. vs. G. N. Ry. Co., supra, they refer to the route over which the shipments in question moved as being an "open route". Apparently by this they meant that it was an unrestricted and available route and not unduly circuitous. That would seem necessarily to follow from the conclusion which they arrived at. It is suggested by the plaintiff that the finding of the Commission in that regard is conclusive upon this court. Under Section 16 of the Interstate Commerce Act (49 U. S. C. A. §16) it would appear that it was merely prima facie evidence. However that may be, I think that the court should not in [fol. 14] this case upset that finding of the Commission. Its repeated holdings that, unless a tariff specified the route over which a through or joint rate applied, it would be deemed to apply to other available routes, seems to have become a rule of tariff construction. The question of what would be a "workable", "reasonable", "available", and "not out of route movement" route is a question of fact, about which reasonable minds might easily differ, and the best results in cases of this kind will no doubt be obtained if the Commission's judgment on such questions—which are peculiarly within their province—is adhered to by the courts. While the reasoning of Commissioner Taylor, who wrote the dissenting opinion in Delmar Co. vs. G. N. Ry. Co., supra, appeals to me as sound, I think the majority

were justified by former rulings in arriving at the conclusion which they did and which I do not feel warranted in disturbing.

I therefore find in favor of the plaintiff, that it is entitled to judgment for $648.84, with interest thereon from September 15, 1922, and the costs and disbursements of this action.

In order to preserve the rights of the defendant upon review, it is allowed an exception to the denial by this court of its motion for findings and judgment in its favor, made upon the sole and only ground that the evidence would support no other conclusion.

Dated this 8th day of August, 1929.

John B. Sanborn, U. S. District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

No. 2134. Law

DELMAR COMPANY, Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, Defendant

JUDGMENT—September 5, 1929

[fol. 15] Pursuant to the Decision rendered and filed herein on the 8th day of August, 1929, it is

Ordered that judgment be entered in favor of the plaintiff in the sum of $648.84, with interest thereon from September 15, 1922, together with said plaintiff's costs and disbursements.

Dated Aug. 28, 1929.

John B. Sanborn, Judge.

Wherefore, by reason of the premises aforesaid, it is now Considered Ordered and Adjudged that said plaintiff, Delmar Company, do have and recover of and from the defendant, Great Northern Railway Company, the sum of

Nine Hundred Twenty and 27/100 Dollars ($920.27) together with its costs and disbursements in this behalf expended, to be taxed, and that it do have execution therefor.

Further Ordered that all further proceedings herein except the entry of judgment, the taxation of costs and entry of judgment therefor, be, and the same are hereby stayed for a period of Forty-two (42) days from and after this date to enable this defendant to prepare and present a bill of exceptions and make a motion for a new trial.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO SETTLE AND FILE A BILL OF EXCEPTIONS—Filed Nov. 18, 1929

On motion of the above named defendant,

It Is Hereby Ordered:

That the time within which a Bill of Exceptions may be settled and filed herein is hereby extended to and including the 1st day of January, 1930.

By the Court:

John B. Sanborn, District Judge.

Dated November 18th, 1929.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

Bill of Exceptions—Filed Dec. 27, 1929

CAPTION

The above-entitled cause came on for trial, before Hon. John B. Sanborn, one of the Judges of the above-named Court, on Friday, the 19th day of April, 1929, at 10 o'clock A. M., at the Federal Building, St. Paul, Minnesota, without a jury, the said cause being transferred to the Third

Division of said Court for trial, and jury being waived by the parties.

There were present and appearing:

Messrs. Shaw, Safford, Putnam & Shaw on behalf of the Plaintiff.

Messrs. R. J. Hagman and J. H. Mulally, on behalf of the Defendant.

Thereupon the following proceedings were had, and testimony taken:

Mr. Putnam: The parties to this action have agreed to waive a jury, Your Honor, and have signed a stipulation to that effect, which is hereby filed with the Court.

The Court: That will be satisfactory.

Mr. Putnam: Your Honor, this case arises out of an order of the Interstate Commerce Commission, in which the Commission directed the payment of $648.84 to this plaintiff as reparation. The defendant in his answer has admitted the facts set forth in the complaint, so far as they refer to the actual shipments, the movement of the cars and so on, and the amount that was actually charged on the shipments. They admit that the order of the Interstate Commerce Commission to pay the money was made and they have not paid anything under that order. The issue here will be undoubtedly merely an interpretation of the tariff, and arises out of the fact that the tariff under which these movements were made specified the rate, but did not limit in any way the routes over which it moved. The contention of the plaintiff will be that a movement from points in North and South Dakota via Minneapolis, consigned to Superior, carries a direct rate to Superior, and that we would be entitled to the published rate, while they are trying to charge, or did charge us the local rate to Minneapolis, plus the proportional amount from Minneapolis to Superior, which makes the difference here involved.

[fol. 17] The Court: Then the question is, whether the through rate applies to shipments moving in that manner?

Mr. Putnam: Yes. I have here a copy of the order of the Interstate Commerce Commission, which I will ask the reporter to mark as an Exhibit.

(Plaintiff's Exhibit A marked for identification by the reporter.)

Mr. Putnam: The document now marked as Plaintiff's Exhibit A is a copy of the order of the Interstate Commerce Commission dated October 10th, 1927, which is set out in the complaint. As I understand it, there is no objection to it being filed as an Exhibit. We offer that as an Exhibit.

Mr. Hagman: No objection.

The Court: Received.

Mr. Putnam: That order refers to a former order of the Commission or finding, dated January 10th, 1927. That former order is recorded in 120 I. C. C. page 530. I have a copy of that order, which I would like to file as an Exhibit, and I will ask the reporter to mark it as Exhibit B.

(Plaintiff's Exhibit B marked for identification by the reporter.)

Mr. Putnam: We offer Plaintiff's Exhibit B which is the report of the Commission in the case of Delmar Company vs. Great Northern Railway Company. The case was submitted on March 20th, 1926, and decided January 10th, 1927, and is reported in 120 I. C. C. page 530.

Mr. Hagman: No objection.

The Court: Received.

Mr. Putnam: That, under the law as I understand it, makes a prima facie case on behalf of the plaintiff. Therefore we rest.

The Court: Very well.

Mr. Hagman: I would like, before presenting our evidence, to take a few moments to explain the theory of our case. Section 8 of the Interstate Commerce Act makes the carrier liable for a violation of the Act, and Section 13 provides for the shipper filing a complaint with the Commis-
[fol. 18] sion for a violation of the Act. Section 14 requires the Commission, after investigation, to make a report which shall include its findings of facts, on which an award of reparation is made. Then Section 16 of the Act provides that if the reparation is not paid, the shipper may bring suit in the State or Federal Court for the amount of the Commission's report, and order, and the Commission's report and order make the prima facie case. The exact language of the statute is that it shall be prima facie evidence of the facts therein stated. Now, as Your Honor knows,

the Interstate Commerce Commission does not make formal findings of facts and conclusions of law as a Court does, but their report which has been handed down, contains three different things; recitals, and conclusions of law, and findings of facts, so that one has to pick out from those, what are really findings of facts. Now, this is not very long, and I have underscored here the statements which I consider to be findings of facts as distinguished from these other things, and I believe it would be quite helpful if I would just read what I consider to be just the findings of facts.

"Complainant in No. 16576, a corporation dealing in grain at Minneapolis, Minn., by complaint filed December 4, 1924, alleges that the rates charged on wheat, corn, oats and rye, in carloads, between May 3 and September 10, 1922, from points in North Dakota, South Dakota, and Minnesota, originally billed to Minneapolis, Minnesota, and reconsigned to Superior, Wisconsin, are inapplicable. Reparation only is sought. The shipments moved over the Great Northern. Complainant paid the through rates to Minneapolis, and 6 cents on corn, oats, and rye, and 6.5 cents on wheat beyond. The direct route to Superior from the several points of origin, except Litchfield and Rogers, Minnesota, is via Willmar and St. Cloud, Minnesota. The route traversed via Minneapolis is longer. The Great Northern offers to refund admitted overcharges on the shipments from Litchfield and Rogers. The distances from points of origin to Superior, Wisconsin, over the two routes and differences, as shown by an exhibit follows:"

Then there is a table here showing the distance from each origin point, and the difference in percentage, of circuity.

"The above description is representative and does not embrace all shipments upon which reparation is asked. The tariffs of the Great Northern provide through commodity rates from points of origin to Superior and to Minneapolis. [fol. 19] The through rates were higher to Superior than to Minneapolis, except that from Howes, North Dakota, the rates to both destinations were equal. Complainant admittedly complied with the requirements of the applicable reconsigning rules.

"A specific tariff rule restricting the rate to the short route was established on September 25, 1923, after these shipments moved."

Then follows a description of the reconsigning tariff, which does not enter into our question here at all. I will not read it. There is a recital here as to what their conclusion was in interpreting this tariff, and after stating the contentions of the parties, the Commission says:

"It appears that previously it was the custom to apply the through rate only via the direct route, and to apply the proportional rate on shipments reconsigned at Minneapolis. Certain traffic difficulties and delays are encountered in moving traffic through the Minneapolis terminals that are not encountered over the short route. In the tariff naming rates to Duluth, rates to points between Minneapolis and Duluth, directly intermediate to Duluth, are higher than to Minneapolis and Duluth. Under complainant's interpretation there would be a violation of the long-and-short-haul c-ause of the fourth section of the interstate commerce act."

Now, those are all the findings, what I consider findings of facts. Then in this sentence is the Commission's conclusion.

"The route from points of origin herein through Minneapolis to Superior was an open route, and in the absence of restricted routing it must be found that the through rates to Duluth applied over the route traversed."

The plaintiff has made a prima facie case by the introduction of that order. The findings of facts that I have read, I have no quarrel with. That is what might be distinguished as findings of facts and not conclusions of law. I am introducing some evidence because some of these findings of fact are very meager and I think it would be helpful to the Court to have a little evidence to see how the Commission reached these findings, and that is my purpose in putting a traffic witness on the stand.

I might say very briefly that these shipments originated in South Da*k*oa or North Dakota and were consigned originally to Minneapolis. After they reached Minneapolis, the [fol. 20] shipper had them sent to Superior, and we col-

lected the rate to Minneapolis, plus this proportional rate from Minneapolis to Superior. Now, if these shipments had moved from the country stations direct to Superior, the rate would have been less than this combination that we charged to Minneapolis and Superior, and the shipper is asking us, and the Commission required us, to construe the tariff as permitting the rate from the country station to Superior, to be applied, when the shipment moves via Minneapolis. Our position is that the rate published from Howes, North Dakota, for instance, applies only when the shipment moves direct from Howes to Superior, and that that route would not be through Minneapolis, and that the tariff as a matter of law should be construed as meaning that the rate applies between Howes and Superior only when it goes over the direct route and not over a circuitous route, as through Minneapolis. The contention of the plaintiff is that the tariff did not say anything about what route this rate applied to, and in the absence of any such provision says that with respect to the routing, the shipper has the right to tell the Great Northern Railroad over which rails it shall take the shipment, although the route required by the shipper may be a circuitous one. I think that will give the Court an idea as to the issues. We will call Mr. Beidelman.

PRESCOTT B. BEIDELMAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination,

By Mr. Hagman:

(Defendant's Exhibits 1 and 2 marked for identification by the reporter)

Mr. Hagman: I desire to offer in evidence defendant's exhibit 1, which is a true and correct copy of the complaint filed by the Plaintiff in this case in the proceedings before the Interstate Commerce Commission; and the paper marked for identification as defendant's exhibit 2, which is the answer of the Great Northern Railway Company to this complaint, which was also filed before the Interstate Commerce Commission. I file these merely to show what the issues were before the Commission.

The Court: Very well, they may be received.

Q. Your name is Prescott B. Beidelman?

A. Yes, sir.

Q. Where do you live?

A. Minneapolis.

[fol. 21] Q. What is your business?

A. I am general freight agent for the Great Northern Railway Company.

Q. With offices in St. Paul?

A. With offices in St. Paul, yes.

Q. How long have you been in the service of the Great Northern Railway Company?

A. I entered the employ in the freight traffic department of the Great Northern Railway Company in 1900 and have been in the employ of that department of that company ever since.

Q. Will you state very briefly what different positions you have held in the traffic department, and the nature of your work?

A. My first position was a clerk, or as a clerk in the office of the Vice President in Charge of Traffic. After some months I was appointed Chief Clerk to the Vice President in Charge of Traffic of the Great Northern Railway Company, which position I held for a year or two, and was then transferred to the general freight office and had jurisdiction over the export and import traffic of the Great Northern Railway Company, in a clerical capacity. After some years at that, I was appointed general agent, refrigerator service, and looked after the handling of perishable freight from the traffic department's standpoint; the question of rates and charges, and also watching service in connection with the handling of those matters. During that time I did some work in miscellaneous rate matters and tariff matters, although my prime duty was with the rates and charges and service on perishable freight. In 1916 I was appointed Assistant General Freight Agent, and my work in that capacity was in connection with the construction of tariffs, interpretation of tariffs; also contact with the public in solicitation of traffic, and matters of a general nature. After the conclusion of the Federal control period, in the capacity of Assistant General Freight Agent, I devoted my time for five or six years or more to rates and tariffs, and the handling of formal complaints before the Interstate

Commerce Commission and the State Commissions, and acted in the capacity in the general office of passing upon tariff matters, and particularly with reference to the construction or interpretation of tariffs as affected by orders of the state and interstate commerce commissions. Since July first of 1928 I have had the title of General Freight Agent, and have been in general charge of all matters in the freight traffic department, and matters of tariff interpretation; matters pertaining to the establishing of new rates, [fol. 22] or to the reasonableness of rates in effect over the entire system, being submitted and handled through my office.

(Defendant's Exhibit 3 marked for identification by the reporter)

Q. Mr. Beidelman, I show you a map marked for identification as defendant's exhibit 3. Does that map correctly show the location of the Great Northern Railway Company in the states of North and South Dakota and Minnesota?

A. It does. It was prepared by our engineering department from their records.

Q. Now, there are numerous stations on this map as shown by red dots. What is the significance of those?

A. Those dots were placed on the map by our engineering department to designate the points of origin of the shipments of grain which are involved in this case.

Q. And those red dots indicate all the country stations at which the plaintiff's shipments of grain involved in this case originated?

A. Yes, the points of origin as designated in the complaint.

Q. Now, where were the plaintiff's shipments billed to in the first place?

A. Minneapolis, Minnesota.

Q. And at Minneapolis were they reconsigned to Superior?

A. They were reconsigned or reshipped to Superior, Wisconsin.

Q. And were they delivered at Superior?

A. They were.

Q. Did they move in the same cars all the way from the country stations to Superior?

A. Yes, sir.

Q. And was the entire movement from the country station until delivery was made at Superior over the rails of the Great Northern Railway Company?

A. Yes, sir.

Q. In no instance did any shipment move over any other line than the Great Northern Railway Company?

A. That is correct. The entire haul from the point of origin to Minneapolis and from Minneapolis to Superior was over the rails of the Great Northern Railway Company.

Q. And what rate did the Great Northern Railway Company collect on these shipments?

A. They collected what we term the local rate from point of origin to Minneapolis, plus what we term the proportional rate from Minneapolis to Superior.

Q. And this combination of rates that you collected resulted in a higher charge than the rate published from the country station to Superior?

A. Yes, sir.

[fol. 23] Q. I think you have worked out an example of that. Take Howes, North Dakota, which is one of the origin points shown on the map. The rate in the tariff from Howes to Superior is 17½ cents on wheat, is it not?

A. That is correct—17½ cents per 100 pounds, on wheat.

Q. And you actually collected on that shipment which moved to Superior by the way of Minneapolis how much?

A. 17½ cents on the movement from Howes to Minneapolis plus 6½ cents covering the movement from Minneapolis to Superior, or a total of 24 cents per 100 pounds.

Q. So you collected 6½ cents more when this shipment went through Minneapolis, than the rate prescribed for the movement from Howes to Superior?

A. Yes.

Q. The rate from Howes to Minneapolis is the same as from Howes to Superior—is that right?

A. That is correct.

Q. In all other instances from the origin points shown on this map, the rate to Superior is somewhat higher than the rate to Minneapolis? That is the statement of the Commission, and that is correct, is it not?

A. That is correct; that is, the direct rate from the country station to Superior is higher than the direct rate from the country station to Minneapolis.

(Defendant's Exhibit 4 marked for identification by the reporter.)

Q. Mr. Beidelman, I show you a tariff marked for identification as defendant's exhibit 4. This tariff is I. C. C. number A-5588. Is this a tariff of the Great Northern Railway Company?

A. It is.

Q. Was it filed with the Interstate Commerce Commission prior to the effective date shown on its cover?

A. It was filed prior to the effective date.

Mr. Hagman: You will not require the certification of this tariff?

Mr. Putnam: No, we concede it is the tariff.

Mr. Hagman: It is the tariff you are relying on yourself here.

Mr. Putnam: No objection to it.

Mr. Hagman: We offer it in evidence, defendant's exhibit 4.

The Court: Received.

Q. Does this tariff, defendant's exhibit 4, show the rates on grain from country stations in Minnesota, North Da-
[fol. 24] kota and South Dakota to Minneapolis and to Superior and to intermediate points?

A. It does.

Q. And also the rates from Minneapolis to Superior?

A. Yes, sir.

Q. And this tariff is the one in effect when the shipments involved here moved, is it not?

A. It is.

Q. And you have attached all of the supplements to that tariff that were in effect during the period that these shipments moved?

A. That is correct.

Q. They are a part of this exhibit 4?

A. They are supplements numbered 3, 5, 6, 7, and 9 which were in effect during the time that these shipments moved.

Q. Mr. Beidelman, I wish that you would point out as an illustration the page in that tariff which names the rate from Howes, North Dakota, to Superior, Wisconsin, on wheat.

Mr. Hagman: I am asking the witness to do that, Your Honor, because if this were a case of contract, that is the page on which the contract appears.

Q. (continued). One illustration will serve, will it not, Mr. Beidelman? They are all gotten up in the same way—they are all published in columns. It is just the same. It does not make any difference?

A. That is right. On page 6 of defendant's exhibit 4, in the index to the tariff, there is found the station Howes, North Dakota, which is shown as having index number 487. On page 43, index 487, Howes, North Dakota, is found in the second column, and in other columns on the page are shown the figures as to the rates in cents per one hundred pounds on grain from Howes to the destination points shown in the headings of the columns in which these figures as to the rates in cents per one hundred pounds appear. The wheat rates are in the second column in each group, there being the heading "Wheat and other articles listed in group E page 11." Under the column headed "St. Paul, Minnesota Transfer or Minneapolis, Minn." we find the figure 17½, which is the cent per one hundred pounds on wheat from Howes to Minneapolis. It is also the rate from Minneapolis to Howes. In other words, this tariff by reference to the headings on page 43, shows that the rates apply between the points of origin shown in one column and the destinations as shown in the other columns. Now, on the same page is found opposite index 487, Howes, the figure of 17½, but that is under the heading at the top of the page "Duluth, Minn., or Superior, Wis.", that rate of 17½ cents being the rate applicable on wheat between Howes, North Dakota, and Superior. I also want [fol. 25] to mention that under the words "St. Paul, Minnesota Transfer or Minneapolis, Minn.", as shown at the heading of the column, is a clause reading, "See notes 1 to 16, pages 13 to 17," the same notation appearing under the heading in the other column following the words "Duluth, Minn. or Superior, Wis."

Q. Is there anything in this tariff, Mr. Beidelman, which relates to the route that a shipment must travel over between Howes and Superior in order to get this 17½ cent rate that is shown here?

A. The tariff is silent on routing. There is no specific routing provided in this tariff.

Q. Now, the contention of the railway company is that that 17½ cent rate from Howes to Superior applies only over the direct route, and that would be via what junctions on that map, defendant's exhibit 3?

Mr. Putnam: We object to that testimony as calling for a conclusion of the witness and attempting to interpret the tariff by an expression of his own ideas. The interpretation of the tariff is, as we interpret it, from the tariff, from the writing, and the duty originally is on the Interstate Commerce Commission to interpret that tariff, which has been done in this instance; and the opinions or ideas of the management of the railroad company that files the tariff is not proper testimony in a case of this kind.

The Court: Well, did I understand you, Mr. Hagman, to ask what was the shortest route, as to which junctions they should have gone through?

Mr. Hagman: Yes, that is all I intended to ask.

Mr. Putnam: The question as framed called for a much broader answer.

The Court: Well, the question as I understood it was, through which junctions the shortest route ran.

Mr. Putnam: No objection then to that question.

A. The shortest route over the Great Northern Railway Company's rails from Howes, North Dakota, to Superior, is through the junctions shown on the map, defendant's exhibit 3; the junctions of Vance, Fargo, Sauk Center, St. Cloud, Milaca to Superior.

Q. You have examined this table on page 531 of the Interstate Commerce Commission's report which has been introduced in evidence here, have you not?

A. I have.

[fol. 26] Q. And the figures of mileage and percentage of circuity shown on that table are correct, are they not?

A. Yes.

Q. And as to Howes, North Dakota, that shows that the distance over this direct route that you have just specified is 331.3 miles, and via Minneapolis is 406 miles, the route through Minneapolis being 75.7 miles greater, or 23 per cent greater than the direct route?

A. Yes, that is shown on that page and the figures are correct, in accordance with our distance tables.

Q. And the reason that you did not protect the 17½ cent rate from Howes to Superior——

Mr. Putnam: Just a moment. You are putting the answer right in the witness' mouth.

Mr. Hagman: Well, I did not intend to lead on anything that I thought was material. I just thought I would ask him what the reason was that he did not protect that rate through Minneapolis, because of the contention that it only applies over the direct route. I was just trying to save time.

The Court: Well, I think you probably should ask him why they did not protect that rate.

Mr. Hagman: Will you answer that, Mr. Beidleman?

A. I did not protect the rate of 17½ cents from Howes to Superior because under our practice for years——

Q. Well, don't go into your practice. Just state your conclusion as to why they did not protect it, stating the company's position in the matter.

A. We did not protect it because we were of the opinion that the 17½ cent rate published in this tariff from Howes to Superior did not apply on cars which moved through Minneapolis.

Mr. Putnam: We move to strike that answer out as being a conclusion and trying to get into the record the custom of the defendant here, which is not proper evidence on the interpretation of this tariff.

The Court: Well, I think I will let it stand subject to your objection, but I do think that expert testimony is admissible on a question of rates and tariffs. If a tariff is perfectly clear, you are correct in your theory, but if it is not——

Mr. Putnam: Well, our contention is that this tariff is clear.

[fol. 27] The Court: Well, I think I will take the testimony subject to the objection.

Mr. Putnam: May it be considered that the same objection goes to all this testimony, as to all opinion evidence advanced?

The Court: Yes, it may go to all opinion evidence advanced by this witness.

Mr. Hagman: Well, I did not intend to introduce any opinion evidence by this witness. I wanted to stick to the facts that are uncontroversial, so far as possible.

The Court: Well, I am not sure that you have not, as a matter of fact. He has simply given the reasons why they did not protect the rate from the original point to Superior.

Mr. Hagman: Well, his answer was not directly responsive to the question. If we open up the other question here, we can both bring in a lot of witnesses, and it would not add much to their opinion, so, so far as the record is concerned, the witness' statement as to what his opinion is as to how the tariff should be interpreted, may be stricken out.

The Court: Very well.

Q. Let me ask you this—isn't the reason that the Great Northern refused to apply the 17½ cent rate from Howes to Superior in the case of the plaintiff's shipments, because those shipments moved via Minneapolis, and not over the direct route that you indicated a while ago?

A. That is correct.

Q. Now, were there two shipments of the plaintiff's where the direct route was through Minneapolis?

A. Yes—two shipments. One, the originating point was at the station of Rogers, Minnesota; the other originated at the station of Litchfield, Minnesota.

Mr. Hagman: Now, as to those two shipments, in our answer, Your Honor, we admitted that the rate to Superior should be protected, because the direct route was through Minneapolis, and we offered judgment for that amount, and we renew the offer here. The exact amount sued for on the Litchfield and Rogers shipments is shown in exhibit A attached to the complaint of the plaintiff in this Court.

Q. Are shipments of grain which originate on the Great Northern at points west of Willmar and St. Cloud, moved through Minneapolis when they are billed simply to Superior?

[fol. 28] A. They are not.

Q. Have they been in the past at any time to your knowledge?

A. It is the practice to handle shipments originating in territory west of Willmar or St. Cloud, billed to Superior, direct to Superior through those junctions, and not to bring them through the terminals at Minneapolis.

Q. That is the present practice?

A. Yes.

Q. And has it been in the past, as long as you know?

A. As long as I have been in touch with the movement of wheat on the railroad, that has been the practice.

(Defendant's exhibit 5 marked for identification by the reporter.)

Mr. Hagman: I now offer in evidence defendant's exhibit 3.

The Court: It may be received.

Q. I show you a paper marked for identification as defendant's exhibit 5. Will you please state what that is?

A. Defendant's exhibit 5 is a verbatim copy of rule 2-A as published in Great Northern tariff number 1240-C, I. C. C. number A-5348.

Mr. Hagman: Mr. Putnam, you raise no objection because the original tariff is not here, do you?

Mr. Putnam: Not because the original tariff is not here, no.

Mr. Hagman: I would like to state to the Court the purpose of introducing this. You will notice that the last paragraph by specific language provides for the rate not applying over an indirect route, and the argument I expect to make is that when we intend the rate to apply over a circuitous route, we specifically so provide.

The Court: Yes.

Mr. Hagman: I offer in evidence defendant's exhibit 5.

Mr. Putnam: May it please the Court—I object to that being offered, and perhaps, as to my basis for objection, I might ask the witness a question.

The Court: Yes, very well.

Cross-examination.

By Mr. Putnam:

Q. In the tariff from which this exhibit 5 is taken, Mr. Beidelman, is there not an exception, which states that it [fol. 29] does not apply to grain, seed, hay or straw moving over the route?

A. There is an exception on page 2 of tariff Great Northern 1240-C——

Mr. Hagman: Is that exhibit 3 in this case?

Mr. Putnam: No, this is the original tariff.

Mr. Hagman: From which this exhibit was taken?
Mr. Putnam: Yes.

A. (continued). —which states that the conversion and reconsignment rules as named in this tariff do not apply on grain, seed (field), seed (grass), hay or straw unless held on track for inspection or disposition orders incident thereto, at billed destination, or at a point intermediate thereto (see rule 14); and rule 14 of this tariff publishes rules and charges governing grain, seed, hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto, at billed destination or at points intermediate thereto, and provides certain practice or rules at points where there is inspection of grain required under the provision shown in note 1 of the rule, which states that it applies on grain and seeds held for inspection which is made under federal, state or board of trade requirements, by competent and official authority independent of both vendor and vendee. In other words, rule 14 of this exception, which throws it over on grain and seed, which refers to rule 14—the exception is in connection with cars which are held for inspection under federal, board of trade, or other requirements. The tariff does apply on the reconsigning or forwarding of grain at country points where there is no inspection.

Q. Will you show us where that is in this tariff, where it appears?

A. Well, rule 14 is the rule in connection with federal or state inspection.

Q. But this rule 2-A which you put in here, does not apply to grain movements?

A. It applies to grain originating west of Minot, as the rule provides—for instance, this note here—grain originating West of Minot.

Q. But it does not apply to anything in this territory?

A. In the affected territory, no. These shipments originated East of that territory.

Q. That is what I wanted to get at.

A. Yes.

[fol. 30] Mr. Putnam: The rule that they are putting in here under exhibit 5, at the time it was in force, had no application to the tariffs under which the shipments herein involved moved. Therefore, it is not pertinent or material

evidence effecting the issues in this case, and we object to it.

The Court: Well, I think I will receive it subject to your objection.

Direct examination (continued).

By Mr. Hagman:

Q. Does that rule, from which exhibit 5 is an excerpt, apply to various different rates on different commodities, Mr. Beidleman?

A. Yes.

Q. As well as grain?

A. Yes. It applies to lumber and coal, except coal at lake ports and miscellaneous commodities.

Q. I desire to call your attention to one finding of the Interstate Commerce Commission in its report on page 532, reading as follows: "In the tariff naming rates to Duluth, rates to points between Minneapolis and Duluth, direct and intermediate to Duluth, are higher than to Minneapolis and Duluth. Under complainant's interpretation there would be a violation of the long and short haul clause of the 4th section of the Interstate Commerce Act." In your opinion, that is a correct statement, that the interpretation of the plaintiff results in the tariff creating violations of the long and short haul clause? I will not ask for you- opinion as to the matter, but is that a correct statement, that applying the tariff as contended for by the plaintiff, that is, through the indirect route via Minneapolis, the tariff calls for a higher rate for a longer than for a shorter haul over the same rails.

Mr. Putnam: We object to that as incompetent, irrelevant and immaterial.

The Witness: You made a misstatement there.

Mr. Putnam: Also that it calls for a conclusion of the witness on matters not in this record; that it is an opinion interpretation of the tariff, which it is the primary duty of the Interstate Commerce Commission to interpret, and which they did not see fit to interpret in the order in the case before them.

Mr. Hagman: I might state, Your Honor, that what I desire to do now is merely to support some evidence, or to [fol. 31] introduce some evidence to support and explain

this finding of the Commission, that complainant's interpretation would result in fourth section violations. The finding of the Commission is here. I find no fault with it. I think it is correct, but I thought Your Honor might like to have us take five minutes or so to indicate just how it comes about, and why it is true, and this was merely a question leading up to that.

Mr. Putnam: Well, if it please the Court, Mr. Hagman—the Commission's recital is a recital of the contention of the defendants in this case. They do not say that it is a finding of a fact.

Mr. Hagman: Well, you will not deny that the Commission's ruling in this case was that the complainant's interpretation of this tariff results in there being violations of the fourth section of that Interstate Commerce Act, would you?

Mr. Putnam: I have not checked that specifically, and I do not think it is material to the issues in this case, because there are decisions on that very question.

The Court: Well, I think I will receive the testimony subject to your objection and then you can argue that, as to whether it is applicable or not.

Mr. Hagman: My reason for presenting it, is in connection with the argument to be made later, whether the tariff can be construed in a legal manner so as to be lawful. That is my purpose in elaborating on the Commission's finding here.

The Court: Very well—he may answer.

Mr. Putnam: Exception.

The Court: Well, there is no need to take exception where evidence is taken subject to objection, although you may have one.

Q. (continued). When I asked the question, Mr. Beidelman, I misspoke by saying "a higher charge for a longer than a shorter haul." I intended to say, a higher charge for a shorter than a longer haul. Now, Mr. Beidelman, I wish you would take this tariff which has been introduced in evidence as defendant's exhibit 4, and briefly indicate an example from some point, where a greater charge would be made for a shorter than a longer haul.

[fol. 32] Mr. Putnam: Are all of these examples going to be taken from this tariff?

Mr. Hagman: From this tariff which is in evidence.

Mr. Putnam: Why can't we submit this in a brief? Why put this all into the evidence?

Mr. Hagman: Well, I thought the Court would like to have a few minutes devoted to it. It will not take more than five minutes.

(Question read by the reporter.)

Q. (continued). If the rates from the country points to Superior are made to apply via Minneapolis instead of over the direct route. Just indicate how you find the rate and what it is.

A. Taking the same point, Howes, North Dakota, as the point of origin that I have outlined here, you look on page 43 to find the rate from Howes to Minneapolis or Superior, and you will find no specific rate authorized on that page from Howes to points intermediate between Minneapolis and Superior or, in fact; to any country stations or outside stations which are not grouped in the tariff with Minneapolis or Superior. Your next move, in looking up a rate, would be to look up your point of destination. In this case say it is Cambridge, Minnesota, which is a point intermediate between Minneapolis and Superior, and on page 4 you find the station of Cambridge indexed as number 9. By reference to page 31 of the tariff, there opposite Cambridge you find rates between Cambridge and Minneapolis and between Cambridge and Duluth and Superior, there being no specific provision for rates between Cambridge and points other than Minneapolis, St. Paul, Minnesota Transfer, or between Cambridge and Duluth and Superior; but as mentioned before, under the heading on page 43, and also under the heading at the top of page 31, you find in parenthesis the words "see notes 1 to 16, pages 13 to 17," so the next move would be to go to those notes and see if there is a rate authorized between Howes, North Dakota, and this station I have selected, Cambridge, in any of those notes. On page 14 you strike or find a note which will fix the rate for you. In note number 6 under the heading "between" are listed certain stations, the stations indicated between numbers 5 to 14 inclusive, and Cambridge being indicated as number 9. That is one point. In this column, under the heading "and" you find index number 487 where Howes, North Dakota, is included. Therefore, through the medium of this

[fol. 33] note 6 on page 14 you find a rate between Howes and Cambridge, that rate or the explanation of it being shown in the next column, which, to summarize it briefly, states that on wheat the rate from Howes, or between Howes and Cambridge, is made by adding 4½ cents to the rate published from Howes to St. Paul, unless a lower rate is arrived at by the use of the distance rates published in Section 3 of the tariff.

Q. And those distance rates do not make a lower rate?

A. I have checked it, and they do not make a lower rate than the rate between Howes and Cambridge which is arrived at by adding 4½ cents to the published rate of 17½ cents from Howes to Minneapolis, which would make a rate of 22 cents from Howes to Cambridge.

Q. Then as I understand you, that tariff provides for a rate from Howes to Cambridge, made up of the 17½ cent rate from Howes to Minneapolis, plus 4½ cents, or 22½ cents?

A. 22 cents.

Q. 22 cents. Now, a shipment from Howes to Superior via Minneapolis would move over the same rails as far as Cambridge, as the Cambridge shipment from Howes would, would it not?

A. It would go over the same rails and would pass through Cambridge in getting to Superior.

Q. So in this case, is that one where a greater charge is made for a shorter haul to Cambridge, than for the longer haul to Superior?

A. Yes.

Q. Under the rates contended for by the plaintiff, the rate to Superior, or from Howes to Superior, would be 17½ cents, and your tariff has provided a rate of 22 cents to the intermediate point of Cambridge?

A. Yes.

Q. And that is not the only one in the tariff, is it, where an intermediate point has a higher rate?

A. No.

Q. You gave them merely as an illustration?

A. Yes, that is all—just as an illustration. There would be numerous others. There would be violations of the long and short haul in connection with the Act, in connection I think, all of these shipments.

(Defendant's exhibit 6 marked for identification by the reporter.)

[fol. 34] Q. I show you a paper which has been marked for identification as defendant's exhibit 6, and ask you what that is.

A. That is a copy of the provision contained in supplement 12 to Great Northern GFO tariff number 1250-D, ICC, A-5712, which became effective September 23rd, 1923—copied from the tariff.

Mr. Hagman: There is no objection to this on the ground that the original tariff is not produced or introduced, is there Mr. Putnam?

Mr. Putnam: Well, this was just before the change in the rules on routings I take it?

Mr. Hagman: Yes.

Mr. Putnam: No objection.

The Court: Received.

Mr. Hagman: Of course, this rule speaks for itself, but for the purpose of asking the witness a question, I would like to say——

Q. This rule contained in this exhibit 6, which was taken from the tariffs, indicates that on September 23, 1923, the Great Northern Railway Company amended its tariff, so as to say in so many words, that the rates from these country stations to Superior apply only over the direct route. Is that right?

A. That is correct.

Q. That was the effect of this exhibit 6, as the language itself says?

A. It had that effect. It went much further than that. It said that the shipments made under the rates named in that tariff——

Q. That the rates apply only over the direct route—that is what I am asking?

A. Yes.

Q. Do the rules of the Interstate Commerce Commission provide that when you put in an amendment of a tariff, that you shall indicate whether it has the result of raising or reducing a rate, or making no change in it at all?

A. That is correct. When you change a rate, rule or regulation, you must indicate whether it is an advance, a reduction or no change.

Q. Now, what is the customary method of the Great Northern Railway Company in indicating the effect of a change in tariffs—what signs are used?

[fol. 35] A. Prior to the recent effective date of what we call Interstate Commerce Commission circular number 20-A we designated an advance by a small letter A, printed inside of a square; a reduction by a small letter R in a square; any changes other than advances or reductions by an asterisk and with a reference at the bottom of the page, showing that it made a change other than an advance or reduction.

Q. And in exhibit 6, when that change was made, do you show an asterisk?

A. Yes, and the explanation "change other than advance or reduction".

The Court: Well, was this change in the tariff made after these shipments moved?

Mr. Hagman: After these shipments moved, yes.

Q. Now, I would like to have you state what the purpose of the Great Northern Railway Company was in amending its tariff to provide that these rates would apply only over the direct route, when it had been contending and is now that the rates applied over the direct route, although no routing is shown in the tariff.

A. The purpose was to prevent controversies with shippers and others, such as this.

Q. Such controversies as we have here?

A. Yes, such controversies as we have here.

Mr. Hagman: I guess I must have left a map at the office which I intended to offer. I will substitute for it a statement, showing mileage and so on, which will be marked as defendant's exhibit 7.

(Defendant's exhibit 7 marked for identification by the reporter.)

Q. I show you a paper marked for identification as defendant's exhibit 7, and you may state what that is.

A. This is a statement showing the mileage from certain points of origin in Minnesota and North Dakota, direct to Superior, Wisconsin; also to Superior, Wisconsin, from the same points of origin, via Minneapolis; and the circuity

of the hauls through Minneapolis, expressed in miles and in per cents.

Q. Now, the Delmar Company, the plaintiff in this case, did not make any shipments to Superior from these points of origin shown in exhibit 7, did they?

A. They did not.

[fol. 36] Q. But the International Grain Company, which had a case before the Interstate Commerce Commission and which is decided jointly with the Delmar case, had shipments to Superior from these origin points shown in exhibit 7, did they not?

A. From some, if not all of them. They had shipments from some of these points. I am not positive that they had them from every one of these points.

Q. Well, between the various parties named in the footnote on page 530 of the Interstate Commerce Commission's report in the Delmar case, between the various parties named there, did they have shipments of grain from these origin points to Superior, over the Great Northern Railway?

A. Yes, there were shipments of grain from all of these origin points, through Minneapolis to Superior, which were involved in proceedings of the same nature, asking for the protection of the direct rate.

Q. In any event, the Great Northern has had direct shipments from these points to Superior?

A. Actual shipments involving the same things which are here in controversy.

Mr. Hagman: We offer in evidence defendant's exhibit 7. While these points are not shipping points by the Delmar Company, they are original grain shipping points involved in the other cases before the Commission, and it is my position that the Delmar case is a test case. There are a number of others, where there are large amounts involved, and in the Delmar case, as that map shows, the points of origin are pretty far south, so that the circuity in going through Minneapolis is not so pronounced as it would be if the shipments came from North Dakota or northern Minnesota points. I offer this exhibit in evidence as showing that the addition and circuity in going through Minneapolis would be very much greater than via the direct route, and in those

cases the circuity would be much greater than is the case in regard to the shipments involved in this proceeding. The purpose of it will be discussed in the argument later, to indicate the effect of the Commissioner's decision in this case as to all shipments generally, and not just to the plaintiff's in this case.

Mr. Putnam: Objected to as incompetent, irrelevant and immaterial, not material to any matter in issue in this proceeding.

The Court: It may be received subject to the objection.

[fol. 37] Q. Now, I desire to call your attention, and also Your Honor's, to this map, which has been marked as defendant's exhibit 3.

Mr. Hagman: Your Honor will observe Surrey, North Dakota, on that map, where the main line forks.

The Court: Yes.

Mr. Hagman: And just East of there, the station of Granville, and also East of Surrey on the other line, the station of Genoa.

The Court: Yes.

Q. (continued). Mr. Beidelman, will you please state what the distance is between Granville and Genoa, by the way of Surrey?

A. Twenty-one miles.

Q. Will you please also state what the distance is from Granville to Genoa by the way of Duluth and Minneapolis, or by the way of Boyleston, Minnesota, and Minneapolis?

A. Approximately 1100 miles.

Q. And it is possible to move a shipment over that 1100 miles of route between Genoa and Granville, just as much as it is possible to move it 21 miles via Surrey, is it not?

A. You could haul it around there, and you would not be rehauling it back over the same rails. It would be a direct forward movement all the time.

Mr. Hagman: I put these figures of distance in the record because there is a dissenting opinion in this case by Mr. Taylor, one of the Interstate Commerce Commissioners, who dissents to the finding of the majority that the through rates from the points of origin in question to Duluth and Superior, without the additional charge beyond Minneapolis, were applicable on the shipments moving through

Minneapolis over the Great Northern, and that if that rule is applicable, the shipper could dictate to them which way it should go. It is an extreme example, but we are introducing it as an explanation as to his holding. I might say that there are other findings of facts in the report and order of the Commission, or in the report which we have not attempted to elaborate on, but of course, we rely on them just the same. That is all.

The Court: Yes.

[fol. 38] Cross-examination.

By Mr. Putnam:

Q. Mr. Beidelman, in your exhibit 6, which is the exhibit which shows the change in the application of routes over which the rates were applicable—that change was made at a time when a controversy had been instigated or stated between shippers and your claim department, was it not, a question had arisen?

A. This specific provision was placed in the tariff as I previously stated, to avoid controversy.

Q. But controversies had started at that time, had they not?

A. Oh, yes. My previous answer covered that.

Q. The shippers were claiming the benefit of the rate via Minneapolis, and this was put in so that in the future they could not make that claim?

A. It was put in, in an effort to clarify the tariff. They had started such contentions after 20 or 30 years—

Q. Now, if you at that time had placed in the tariff, instead of a symbol which indicated no change in the rate, a symbol that would have indicated an advance in rate, you might have prejudiced your position in proceedings such as this might you not?

Mr. Hagman: That is objected to as asking a witness for a conclusion and not for a fact.

The Court: Well, I will take the testimony subject to the objection. He may answer.

A. We would not think of putting that in there, because we undertake to put in what we consider to be the changes which are made. If it is an advance, we call it an advance;

if it is no change, we designate it as no change—to the best of our knowledge.

Q. Similar rates or rates for similar movements in connection with other carriers are published in tariffs known as the Countiss tariffs, are they not?

A. Yes, we were a party to Countiss' tariffs at that time, which are now designated as Toll's tariffs.

Q. At approximately the same time, a similar provision was placed in the Countiss tariffs, governing movements that would operate under the Countiss tariffs, but which would include transportation either to Minneapolis or Superior by one of these routes?

A. Yes.

Mr. Hagman: Do you mean, over the Great Northern alone, or in connection with other railroads?

[fol. 39] Mr. Putnam: In connection with other railroads, but from the point of Wilmar to Minneapolis, or Willmar to Superior?

A. Well——

Q. Well, state whether that tariff covered that operation?

A. That and other tariffs. We had a similar rule placed in other tariffs.

Q. When that was put in the Countiss tariff, do you recall whether that was indicated as no change or as an advance?

A. I do recall it very clearly.

Q. What did it indicate?

A. It indicated as I recall it, an advance, and we immediately took it up with Mr. Countiss, to know why some clerk in his office had done that.

Q. So it was put in that tariff as an advance?

A. Yes.

Q. While in your tariff it was put in as no change?

A. The publishing agent, Mr. Countiss, put it in as an advance, and we took it up immediately with him, to have it straightened out.

Mr. Putnam: I ask that the last be stricken.

The Court: Yes, it may be stricken.

Q. Mr. Beidelman, referring to defendant's exhibit 3, this map, and taking a shipment which originated at Howes,

North Dakota, Howes being located on the line of the Great Northern, the north and south line, which is west of Fargo——

A. Yes.

Q. The general movement of traffic would be from Howes south, wouldn't it, and would go to Willmar, and from there across through St. Cloud to Superior?

A. It would go south, and either through Willmar or St. Cloud—one or the other of those points.

Q. But the general movement of that traffic would be through Willmar?

A. In practice, our line through Willmar is the one over which we handle most of our freight.

Q. So that if the movement of these cars that are under consideration here, if they were originally routed to Superior, they would not of necessity take the short route; they would take the usual line of operation through Willmar?

A. Well, I can't say which route they would take. They would take one or the other.

Q. But in the majority of cases, isn't that right?

A. I can't say as to that.

Q. That is your general line of traffic, isn't it?

[fol. 40] A. Our transcontinental traffic is handled through Willmar. The miscellaneous traffic is handled through Willmar and the St. Cloud division in accordance with the way the power is working. By that, I mean the engines. It isn't an ironclad rule—either one route or the other route.

Q. Either line is available for the movement then?

A. Yes, and it is handled over both lines.

Q. And your transcontinental traffic is handled largely over the Willmar route?

A. Coming into eastern terminals, yes. That is the preferred route.

Q. So you do not necessarily then handle that by the short route?

A. In every instance we do not.

Q. There are other available routes which may be used to Superior, are there not?

A. Yes, sometimes it is handled in fact through Larimore, and across that way. It may be.

Q. Or it may move over the northern rails?

A. That is, th-ough Larimore, yes.

Q. Shipments originating at the points indicated here in red that are in South Dakota, would either go through Willmar to Superior or through Tintah and Evansville to Superior, would they?

A. One or the other of those routes. After leaving Willmar they would go through St. Cloud—not through Minneapolis.

Q. Is there any movement of traffic from Tintah to Evansville, of any consequence?

A. No.

Q. So that freight originating at points like Park, Tacoma, Putney, and Burch, would go to Willmar before going to Superior?

A. They would move through Willmar and St. Cloud.

Mr. Hagman: You might ask why there—I think it might save some redirect examination.

Q. I presume that is your regular line of operation, isn't it?

A. As to why they are handled that way?

Q. Yes.

A. Because the Tintah-Evansville cutoff is not a railroad over which you could handle heavy tonnage, but mileages are figured across that way. I might add to that—it is not a physical railroad—the rails and bridges are light.

Q. In speaking of these shipments at Minneapolis being sent to Superior, you speak of reconsignment or reship- [fol. 41] ment. You mean reconsignment, do you not? They were all reconsigned.

A. They were reshipped to both. There were no cars billed from Minneapolis. Taking one as an example; when a shipper came to the railroad company and surrendered his freight bills showing that the grain had moved into Minneapolis; under the provisions of item 170 on page 55 of the tariff, defendant's exhibit 4, a shipment of wheat would be entitled to the proportional rate of 6½ cents from Minneapolis to Duluth.

Q. Now, Mr. Beidelman, was the freight bill surrendered at Minneapolis, under that provision? Have you an actual knowledge of that?

A. As to whether the freight bill was actually surrendered, I can't say of my own knowledge and belief, but

from the fact that it was the identical car which brought the shipment from the country station to Minneapolis, it follows that it had moved into Minneapolis.

Q. It had moved into Minneapolis?

A. Because our agent had a record of it having moved in from the country station.

Q. And then it was moved into Superior or Duluth——

A. Under item 170 of this exhibit 4. No reconsigning charge was charged on any of this grain.

Mr. Hagman: Well, I don't think there is any difference between us, so far as this case is concerned, which involves the question of whether these shipments were reconsigned or reforwarded, because we charged you the proportional rate from Minneapolis to Superior, which was 6½ cents. We did not charge you with the local rate of 13 cents; so what the proper rate was between Minneapolis and Superior, as I state, would not enter into the question of whether the rate from Howes to Superior applied via Minneapolis or not.

Mr. Putnam: Well, I think on the question there of whether it was a reshipment or not—he used the word reshipment.

Mr. Hagman: How would it have any bearing on the issues here?

Mr. Putnam: Under the tariff, a reshipment might be interpreted otherwise, and if it is conceded that it was merely a reconsignment, I do not raise any question about it. I don't like the term "reshipment". I don't want to put a witness on the stand to straighten that out.

[fol. 42] Mr. Hagman: Well, the Commission on page 532 of this report, after citing this section I have referred to says: "It is manifest from the wording of the above rule that it is intended to apply to reshipments only and not as here to reconsignments," so the Commission considered these reconsignment, so I don't see what difference it makes what they were, so far as the issues here are concerned.

Q. I believe you testified that there was no specific restrictions in the tariff, as to the route that these shipments should take.

A. The tariff was silent on that entirely.

Q. The examples that you have used here are the rates from Howes, North Dakota?

A. Yes.

Q. Is there any other point in this list, from which the rates to Minneapolis and Superior are exactly the same, according to the tariff?

A. Not except Howes. I so testified.

Q. In the other instances the rate to Minneapolis is lower than the rate to Superior, and so the difference would be less in the claims here?

A. Yes, that is correct.

Q. Howes may be an illustration, but is not really typical of this movement as an average condition?

Mr. Hagman: Well, I object to the question because I don't understand what you mean by typical. Do you mean typical in so far as the amount of overcharge on your theory is concerned.

Mr. Putnam: Yes, on the movement.

Mr. Hagman: Well, if that is it, I have no objection.

A. Well, Howes, as I stated, is the one point from which the rate to both Minneapolis and Superior is the same. Therefore, the spread or the difference would be less in the other cases, or on the other cars.

Q. And also the out of line movement would be greater in that case?

A. Well, they are all figured on the table in the Commission's report, on page 531, which is an exhibit in this case.

Q. Mr. Beidelman, from your investigation of these shipments and of other shipments from similar points—maybe not exactly the same—cars have moved to Minneapolis, have been reconsigned to Superior, and you have collected only the through rate—the through rate published from the point of origin to Superior?

[fol. 43] Mr. Hagman: Do you want to open up that question, which took so much time before the Commission, and on which there is a finding here? If you do, all right, but if you do it will be a lengthy proceeding. There is a finding here on page 532.

Mr. Putnam: Which says that these cars have moved in that manner and that you have collected only the published rate from point of origin to destination.

Mr. Hagman: Well, I am not subscribing to your language as to what this says. It is here though. If you open this up, there is a lot to be said about it.

Mr. Putnam: Well, I would like to have an answer to that question.

Mr. Hagman: I have not made any attempt to go into anything with respect to this finding on page 532 as to what the previous practice was. I am relying upon the finding of the Commission here.

The Court: Well, have you any quarrel with the Commission on that, Mr. Putnam, as to what they have said on that matter?

Mr. Putnam: No, I don't think we have any quarrel with that finding but the witness could answer that question without going any further than the Commission has—that there have been such shipments.

Mr. Hagman: Well, I feel that we should object to it, on the ground as stated.

The Court: Well, I think the Court would have to accept the determination of the Commission on that, and inasmuch as it has not been gone into here, unless it is important, I do not see why we should go into it.

Mr. Putnam: Under those conditions I will withdraw the question. That is all.

Redirect examination.

By Mr. Hagman:

Q. Counsel for plaintiff called your attention to this exhibit 6, and in that connection asked you if in the tariff published by Mr. Countiss, to which the Great Northern is a party, a similar provision respecting routing was not shown as an advance. I think you explained that.

A. I stated that it was.

[fol. 44] Q. Now, Mr. Countiss, who is now succeeded by Mr. Toll, while he had charge, was the agent for a large number of railroads for the purpose of publishing their tariffs, was he not?

A. Yes, he published tariffs, and there were other duties, but that was one of his duties as agent.

Q. And the purpose of it was to avoid each line publishing individual tariffs?

A. Yes.

Q. And this tariff that Mr. Putnam referred to as having been issued by Mr. Countiss, differed from the Great Northern Railway Company's tariff named in your exhibit 6, in that the Great Northern tariff referred to in exhibit 6 was an exclusively Great Northern tariff published by the Great Northern Railroad Company, on its own behalf?

A. That is correct.

Q. And that Countiss tariff was a tariff which he published as agent for a large number of lines?

A. Yes, that is correct.

Q. You were asked some questions with respect to the routes over which shipments were actually carried, and I think counsel for plaintiff brought out that in some instances there was some variation from the absolutely shortest route. I think you said that, didn't you?

A. In actual operations there is some variation.

Q. But you did say that that variation never extended to the extent of going through Minneapolis in getting to Superior?

A. No, because I had already testified as to the movement of grain from points west of St. Cloud and Willmar to Superior, always going through Willmar and St. Cloud, and never through Minneapolis.

Q. Explain a little more fully why it is that in some instances the Great Northern Railroad does not move a shipment over the absolute shortest route, but makes some slight deviation from the shortest route in miles.

A. One principal reason is to accommodate the train service. If I may amplify that a little, you may have ample power at one end of a freight run, going say south, and your trains moving north-bound may be heavy, so in cases of that kind, they would pick up on the south-bound move, loads which naturally under direct mileage would be north-bound——

Mr. Putnam:: Well, just a moment.

Mr. Hagman: You brought this up yourself. I am having the witness explain why there is that slight deviation from the direct route at times. I would not have gone into this if you had not opened it up.

[fol. 45] The Court: Well, isn't that rather obvious, that that would be true; that they would move the traffic in the

most economical way, depending upon power and equipment?

Mr. Hagman: Yes, I think so. I wanted to bring it out that it was a matter of economy and convenience——

The Court: I think I understand that.

Mr. Hagman: Then that is all. We rest our case.

Mr. Putnam: Plaintiff rests also.

DEFENDANT'S MOTION FOR FINDINGS AND JUDGMENT

Mr. Hagman thereupon moved the Court on behalf of the defendant for findings and judgment in favor of the defendant upon the sole and only ground that the evidence would support no other conclusion, with the understanding that if said motion was denied the defendant would be allowed exceptions to the same.

STIPULATION OF COUNSEL APPROVING BILL OF EXCEPTIONS

It is hereby stipulated that the foregoing, consisting of 48 pages of typewritten matter, together with plaintiff's exhibits A and B and defendant's exhibits numbered 1, 2, 3, 4, 5, 6 and 7, which exhibits were offered and received in evidence, constitute a full, true and correct transcript of all of the testimony duly offered and introduced, and of all motions, rulings and orders made, and of all exceptions taken and allowed upon the trial of the foregoing action, and that the same is in accordance with the truth and may, without further notice, be settled, allowed and certified as the Bill of Exceptions in said action and made a part of the record herein.

Dated this 20th day of December, 1929.

Shaw, Safford, Putnam and Shaw, Attorneys for Plaintiff, 826 First National-Soo Line Bldg., Minneapolis, Minnesota. F. G. Dorety, J. H. Mulally, R. J. Hagman, Attorneys for Defendant, 1120 Great Northern Building, St. Paul, Minnesota.

[fol. 46] APPROVAL OF BILL OF EXCEPTIONS BY DISTRICT JUDGE

Thereupon, and within the time allowed, the defendant duly tendered this Bill of Exceptions herein, which having

been seen and examined by the Court and counsel, and counsel having consented thereto, and it appearing to the Court that the same, together with the exhibits referred to in the attached stipulation of consent, contain all the evidence offered and introduced; and of all motions made, rulings and orders made, and all exceptions taken and allowed upon the trial of the foregoing action, is hereby allowed, approved, signed, sealed and ordered to be filed and made a part of the record in this cause this 27th day of December, 1929.

By the Court:

John B. Sanborn, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Dec. 2, 1929

Now comes the Great Northern Railway Company, the defendant and appellant in the above entitled proceeding, and respectfully assigns the following errors in the record and proceedings in said case:

1. The United States District Court for the District of Minnesota, Fourth Division, erred in denying defendant's motion for findings and judgment in its favor upon the sole and only ground that the evidence would support no other conclusion.

2. The said Court erred in failing to find that as a matter of law, regardless of any finding or holding of the Interstate Commerce Commission with respect thereto, the rates from the country stations to Superior, Wis., published in defendant's tariffs and demanded by plaintiff on its shipments, applied only via the shortest and most direct routes and not via the circuitous route through Minneapolis which plaintiff's shipments took.

3. Said Court erred in construing the finding of the Interstate Commerce Commission that the route through Minneapolis, Minn., to Superior, Wis., was "an open route," as a finding that the route through Minneapolis was not "unduly circuitous"; and the Court further erred in holding that the

[fol. 47] Interstate Commerce Commission did not find that where a rate is published in a tariff without restricting the movement to any particular route, that the shipper may use any route no matter how circuitous.

4. The said Court erred in holding that the Interstate Commerce Commission in finding the route through Minneapolis to Superior to be "an open route" determined a question of fact or an administrative question which the Court in this case should not upset.

5. The said Court erred in failing to find that if the defendant's tariff rates for transportation from the country stations to Superior are applied to the circuitous route through Minneapolis it would result in extending a privilege or facility in the transportation of property which is not specified in the defendant's tariffs and contrary to Section 6 of the Interstate Commerce Act.

6. The Court erred in failing to find that the evident intent of the defendant's tariffs was to restrict the routing in connection with rates from the country stations to Superior to the shortest and most direct route.

7. The said Court erred in failing to find that it was the custom to apply the rates from the country station to Superior named in this tariff to the direct route and to apply the proportional rate on shipments reconsigned at Minneapolis.

8. The said Court erred in failing to find that the application of the defendant's rates from the country stations to Superior via the circuitous route through Minneapolis would result in violations of the long-and-short-haul clause of the fourth section of the Interstate Commerce Act and in placing an unlawful construction upon defendant's tariffs which would be avoided by construing the said rates as applying only over the shortest and most direct route.

9. The said Court erred in failing to find that effect should be given to all parts of the defendant's tariffs.

10. The Court erred in failing and refusing to dismiss the complaint except as to the shipments from Litchfield and Rogers, Minn.

Dated this 26th day of November, 1929.

F. G. Dorety, J. H. Mulally, R. J. Hagman, Counsel for Appellant.

[fol. 48] (Endorsed:) Service admitted this 27th day of Nov. 1929. Shaw, Safford, Putnam & Shaw, Attorneys for plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PRAYER FOR REVERSAL—Filed Dec. 2, 1929

Now comes the Great Northern Railway Company, the defendant in the above entitled proceeding, and respectfully prays that for the errors assigned and filed herewith, the judgment of the United States District Court for the District of Minnesota, Fourth Division, entered herein on the 5th day of September, 1929, in favor of the plaintiff Delmar Company, and against the defendant Great Northern Railway Company, in the sum of Nine Hundred Twenty and 27/100 Dollars ($920.27), be reversed and a judgment rendered in favor of the said Great Northern Railway Company and for its costs.

Dated this 27th day of November, 1929.

F. G. Dorety, J. H. Mulally, R. J. Hagman, Attorneys for Defendant.

(Endorsed:) Service admitted this 27th day of Nov., 1929. Shaw, Safford, Putnam & Shaw, Attorneys for Plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed Dec. 2, 1929

To the Honorable John B. Sanborn, District Judge:

The above named defendant feeling aggrieved by the judgment rendered and entered in the above entitled cause on September 5, 1929, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and it prays that an appeal be al-

lowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the said Circuit Court of Appeals under the rules [fol. 49] of said Court in such case made and provided, and the petitioner further states that plaintiff has waived both cost and supersedeas bond, which waiver is attached hereto, and prays that this appeal be allowed without bond.

F. G. Dorety, J. H. Mulally, R. J. Hagman, Attorneys for Defendant, 1120 Great Northern Building, St. Paul, Minnesota.

Dated: November 27th, 1929.

WAIVER OF COST AND SUPERSEDEAS BOND AND CONSENT TO STAY

Now comes the plaintiff above named, by and through its attorneys of record, and waives both a cost and a supersedeas bond on any appeal taken by the defendant from the judgment entered herein, and consents to the making of an order allowing an appeal by the defendant without either a cost or supersedeas bond, and providing that all proceedings herein be stayed to the same extent as if a supersedeas bond had been filed and approved.

Dated November 27th, 1929.

Shaw, Safford, Putnam and Shaw, Attorneys for Plaintiff, 826 First National Soo Building, Minneapolis, Minnesota.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed Dec. 2, 1929

Upon motion of Messrs. F. G. Dorety, J. H. Mulally, and R. J. Hagman, attorneys for defendant,

It is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the judgment heretofore filed and entered herein be, and the same hereby is, allowed, and that a certified transcript of [fol. 50] the record, testimony, exhibits, stipulations, and

all proceedings be forthwith transmitted to said Circuit Court of Appeals.

It is further ordered that said appeal is allowed without either a cost or supersedeas bond, and that all proceedings herein be stayed in the same manner and to the same extent as if such bonds had been filed and approved.

By the Court:

John B. Sanborn, Judge.

Dated December 2, 1929.

[File endorsement omitted.]

Citation, in usual form, showing service on Shaw, Safford, Putnam & Shaw, filed December 3, 1929, omitted in printing.

[fol. 51] IN UNITED STATES DISTRICT COURT

ELECTION AS TO PRINTING—Filed Dec. 21, 1929

The defendant in the above entitled cause hereby elects to take and file in the United States Circuit Court of Appeals for the Eighth Circuit a transcript of the record herein, to be printed under the supervision of the Clerk of said Court, under its rules.

F. G. Dorety, J. H. Mulally, R. J. Hagman, Attorneys for Defendant, 1120 Great Northern Building, St. Paul, Minnesota.

Dated December 20, 1929.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT—Filed Dec. 21, 1929

To the clerk of the above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the Clerk of the United

States Circuit Court of Appeals for the Eighth Circuit under the appeal heretofore taken by the defendant, and include in said transcript the following:

1. Complaint.
2. Answer.
3. Reply.
4. Stipulation waiving jury.
5. Decision.
6. Judgment.
7. Clerk's Record of trial.

[fol. 52] 8. Order extending time to settle Bill of Exceptions to January 1, 1930.

9. Bill of Exceptions with stipulation and order settling same.

10. Assignment of errors and prayers for reversal.
11. Petition for appeal with waiver of bond.
12. Order allowing appeal.
13. Citation on appeal.
14. Election as to printing.
15. This præcipe.
16. The following exhibits, to-wit:

(a) Plaintiff's Exhibit A.
(b) Plaintiff's Exhibit B.
(c) Defendant's Exhibit 1.
(d) Defendant's Exhibit 2.
(e) Defendant's Exhibit 3.
(f) Defendant's Exhibit 4.
(g) Defendant's Exhibit 5.
(h) Defendant's Exhibit 6.
(i) Defendant's Exhibit 7.

17. Clerk's certificate to transcript.

Said transcript to be prepared as required by law and by the rules of the United States Circuit Court of Appeals for the Eighth Circuit.

F. G. Dorety, J. H. Mulally, R. J. Hagman, Attorneys for Defendant, 1120 Great Northern Building, St. Paul, Minnesota.

Dated December 20, 1929.

Consent to Contents of Record

The plaintiff, by and thru its attorneys of record, hereby admits service of the above præcipe and contents

[fol. 53] thereto and agrees that the transcript requested thereby contains all of the records in this case which are material to the determination on the merits of the appeal heretofore taken by defendant.

Shaw, Safford, Putnam & Shaw, Attorneys for Plaintiff, 826 First National Soo Line Bldg., Minneapolis, Minnesota.

Dated December 20, 1929.

[File endorsement omitted.]

PLAINTIFF'S EXHIBIT A, ORDER OF INTERSTATE COMMERCE COMMISSION

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 10TH DAY OF OCTOBER, 1927

No. 16576

DELMAR COMPANY

vs.

GREAT NORTHERN RAILWAY COMPANY

It appearing, that on January 10, 1927, the commission entered its report in the above entitled proceeding, which report is hereby referred to and made a part hereof, and this proceeding now coming on for further consideration on the question of reparation, and the parties having filed an agreed statement with respect to the shipments in question; we find that complainant is entitled to an award of reparation from above-named defendant in the amount of $648.84, with interest.

It is therefore ordered, that the above named defendant be, and it is hereby authorized and directed to pay unto complainant Delmar Company, on or before November 25, 1927, the sum of $648.84, with interest thereon at the rate of six per cent per annum from September 15, 1922, as reparation on account of inapplicable rates charged for the transportation of numerous carload shipments of grain

from points in North Dakota, South Dakota and Minnesota, to Superior, Wis.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 54] (Endorsed:) Filed Apl. 9, 1929. Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

PLAINTIFF'S EXHIBIT B

INTERSTATE COMMERCE COMMISSION

No. 16576

DELMAR COMPANY

vs.

GREAT NORTHERN RAILWAY COMPANY

Submitted March 20, 1926. Decided January 10, 1927

Order of Interstate Commerce Commission

Local rates on grain, in carloads, from points in Montana, North Dakota, South Dakota, and Minnesota to Duluth, Minn., and Superior, Wis., unrestricted as to routing, found applicable through Minneapolis, Minn., as well as over the more direct routes, except where the tariffs provided for an additional charge beyond Minneapolis. Reparation awarded.

J. F. Adams and William J. Harrigan for complainants.

M. L. Countryman, Jr., A. H. Lossow, R. J. Hagman, F. G. Dorety, D. F. Lyons, B. W. Scandrett, and Fletcher Rockwood for defendants.

Report of the Commission

By the COMMISSION:

Exceptions were filed by complainant in No. 16576 and by defendant Great Northern Railway Company to the reports proposed by the examiners and the cases were

orally argued. All the cases will be embraced in one report. Rates will be stated in cents per 100 pounds.

No. 16576

Complainant in No. 16576, a corporation dealing in grain at Minneapolis, Minn., by complaint filed December 4, 1924, alleges that the rates charged on wheat, corn, oats, and rye, in carloads, between May 3 and September 10, 1922, from points in North Dakota, South Dakota, and Minnesota, originally billed to Minneapolis, Minn., and reconsigned to Superior, Wis., were inapplicable. Reparation only is sought. The shipments moved over the Great Northern. Complainant paid the through rates to [fol. 55] Minneapolis, and 6 cents on corn, oats, and rye, and 6.5 cents on wheat, beyond.

The direct route to Superior from the several points of origin, except Litchfield and Rogers, Minn., is via Willmar and St. Cloud, Minn. The route traversed via Minneapolis is longer. The Great Northern offers to refund admitted overcharges on the shipments from Litchfield and Rogers.

The distances from points of origin to Superior, Wis., over the two routes and differences, as shown by an exhibit follows:

This report also covers No. 16466, International Grain Company vs. Northern Pacific Railway Company, et al.; (Sub-No. 1), Hatton Farmers' Elevator Company vs. Great Northern Railway Company; (Sub-No. 2), International Grain Company vs. Great Northern Railway Company; (Sub-No. 3) Same vs. Minneapolis St. Paul & St. Sault Ste. Marie Railway Company, (Sub-No. 4) Same vs. Same; and (Sub-No. 5), Buxton Grain & Potato Company vs. Great Northern Railway Company.

Point of origin	Shortest mileage		Additional haul via Minneapolis	
	Direct via Mpls.		Miles	Per cent
Howes, N. Dak.	331.3	406.0	75.7	23
Rogers, Minn.	167.7	167.7	0.0	0
Litchfield, Minn.	211.1	211.1	0.0	0
Kerkhoven, Minn.	207.3	251.0	43.7	21
Appleton, Minn.	245.7	289.4	43.7	18
Halloway, Minn.	239.6	286.3	43.7	18
Albee, S. D.	275.6	319.3	43.7	16
Burch, S. D.	334.3	409.3	75.0	22
Grover, S. D.	325.6	369.3	43.7	13
Osceola, S. D.	364.5	408.2	43.7	12
Planey, S. D.	366.2	441.2	75.0	20
Putney, S. D.	358.6	433.6	75.0	21
Sheffield, S. D.	376.5	420.2	43.7	12
Rauville, S. D.	309.9	353.6	43.7	14
Tacoma Park, S. D.	362.4	437.4	75.0	21
Willow Lake, S. D.	347.8	391.5	43.7	13

The above description is representative and does not embrace all shipments upon which reparation is asked.

The tariffs of the Great Northern provided through commodity rates from points of origin to Superior and to Min- [fol. 56] neapolis. The through rates were higher to Superior than to Minneapolis, except that from Howes, N. Dak., the rates to both destinations were equal. Complainant admittedly complied with the requirements of the applicable reconsigning rules. It contends that inasmuch as the Great Northern published no tariff rule restricting routing to Superior it was authorized to ship over the long route at the through rate. Defendant contends that the rates charged were applicable.

A specific tariff rule restricting the rate to the short route was established on September 25, 1923, after these shipments moved. When the shipments moved item 170 of the tariff, providing the proportional commodity rates of 6 and 6.5 cents charged, carried the following additional provision:

Applies only as a proportional rate on shipments originating beyond. The local rate from points from which the proportional rate applies to be the minimum through

rate viz 13 cents per 100 lbs. on article in group 1 and 11.5 cents per 100 lbs. on articles in group 2.

Wheat is in group 1 and corn, oats and rye are in group 2.

In naming the rate the tariff refers to notes 1 and 2. Note 1 only is important here. It provides:

Duplicate inbound freight bills of in-tial line bearing following notations must be surrendered to the Great Northern Railway on date of reshipment as authority for protection of rate named:

This duplicate freight bill must be surrendered to obtain proportional rates on Grain, Grain Products, Flaxseed, Millet Seed or Flaxseed Screenings when reshipped. No other freight bill will be accepted for reshipping purposes. Shipments moving under this proportional rate must be forwarded within twelve months (see exception) from date of freight bill covering original shipment. Carriers will require an accounting of tonnage on hand and cancellation of excess freight bills annually, as of either June 30th or December 31st and at such other times as may appear necessary to properly apply the lawful rates.

It is manifest from the wording of the above rule that it is intended to apply to reshipments only and not as here to reconsignments.

[fol. 57] Complainant's witness testified that 20 of its shipments were reconsigned and moved through Minneapolis to Superior at the through rate. Whether cars of other shippers moved in like manner under the same rate is not shown. A witness for the Great Northern testified that the 20 cars referred to were permitted to move over the long route at the through rate by error and oversight. It appears that previously it was the custom to apply the through rate only via the direct route, and to apply the proportional rate on shipments reconsigned at Minneapolis. Certain traffic difficulties and delays are encountered in moving traffic through the Minneapolis terminals that are not encountered over the short route. In the tariff naming rates to Duluth, rates to points between Minneapolis and Duluth, directly intermediate to Duluth, are higher than to Minneapolis and Duluth. Under complainant's interpretation there would be a violation of the

long-and-short-haul clause of the fourth section of the interstate commerce act.

In Pioneer Lumber Co. vs. Director General, 74 I. C. C. 288, respecting shipments from Puget Sound via Minneapolis to Superior, about 2,042 miles, we said:

At the time of movement the rates to Minnesota Transfer also applied to Duluth via the "Northern Pacific Railway," but defendants argue that they applied only by way of the direct route through Staples and Brainerd, Minn., and not over the route of movement, which is 146 miles longer. There was nothing in the governing tariffs which restricted the application of the rates to a particular line of the Northern Pacific. The route through Minnesota Transfer is workable and in the past the Northern Pacific tariffs have specifically provided for the application of the Duluth rates through that point. In the absence of a restricted routing, it must be held that the rates to Duluth applied over the route of movement. Van Dusen Harrington Co. vs. C. M. & St. P. Ry. Co., 47 I. C. C. 59, 61.

The route from points of origin herein through Minneapolis to Superior was an open route and in the absence of restricted routing it must be found that the through rates to Duluth applied over the route traversed.

No. 16466 and Sub-Nos. 1 to 5

From the points of origin here considered in Minnesota, North Dakota, and Montana the Northern Pacific, the Great Northern, and the Minneapolis, St. Paul & Sault Ste. Marie Railways, the latter hereinafter called the Soo [fol. 58] Line, each reaches Duluth, Minn., or Superior, Wis., or both, by a route through Minneapolis, Minn., which is longer than its direct route. The tariff of each of these carriers naming rates on wheat to Duluth and Superior contains no routing restrictions. Each carrier publishes, from certain of these origin points, the same rate to Minneapolis as to Duluth and Superior. These complainants billed carload shipments of wheat to Minneapolis, surrendered inbound billing, meeting all tariff requirements in that respect, and reforwarded the cars to Duluth or Superior. They were charged the rate to Minneapolis, plus 6.5 cents beyond. The latter is the equiva-

lent of the proportional rate from Minneapolis to Duluth and Superior. Complainants allege that, inasmuch as the tariffs of the respective lines provided no routing, and placed no restrictions upon routing, the rate to Duluth and Superior was applicable through Minneapolis, and that the charging of an additional 6.5 cents beyond Minneapolis was unlawful under section 6 of the interstate commerce act. The reasonableness and propriety under other sections of the act of the rates charged is not in issue.

The one shipment over the Northern Pacific was from Ronan, Mont., to Duluth. The direct route of the Northern Pacific between these points is through Brainerd, Minn., 1,315 miles, 146 miles less than the route through Minneapolis, 1,461 miles. The rate was 48 cents to Duluth and Minneapolis, and the tariff, as stated, specified no routing, or restriction of routing. Rule 33 thereof provided, as shown below, for the addition of 6.5 cents to the rate to Minneapolis, on shipments routed through Minneapolis, from all except certain designated points, as to which it specifically provided for no additional charge.

33. Grain Reforwarded.—Grain originating at stations named herein may be reforwarded in the original car and on the original waybill at St. Paul, Minneapolis or Minnesota Transfer to Duluth, Minn., or Superior, Wis., or reforwarded to Duluth, Minn., or Superior, Wis., to St. Paul, Minneapolis or Minnesota Transfer, Minn., at an additional charge of six and one-half (6½) cents per 100 lbs., on wheat and articles taking the same rates as described in Rule No. 5 and six (6) cents per 100 lbs. on corn and articles taking same rates as described in Rule 5 and nine (9) cents per 100 lbs. on Flax Seed and Millet Seed, subject to minimum weights provided in Rule No. 45 except that grain originating at Terry, Miles City, Forsyth, Bozeman, Belgrade, Manhattan, Amsterdam, Arceny, Logan, [fol. 59] Three Forks, Willow Creek, Sappington, Whitehall, Butte, Deer Lodge, Lombard, Helena, Garrison, Drummond or Missoula, Mont., billed to Minneapolis, St. Paul, or Minnesota Transfer, Minn., may be reforwarded in the original car and on the original waybill to Duluth, Minn., or Superior, Wis., without additional charge other than the charge for diversion or reconsigning as provided in N. P. Ry. tariff No. 77-M, I. C. C. No. 7218, supplements thereto or reissues thereof (C. F. 17052).

The above exceptions to the addition of the 6.5 cents beyond Minneapolis were made to meet the competition of the Chicago, Milwaukee & St. Paul. The route of that carrier from the same station to Duluth is through Minneapolis.

Complainants contend that rule 33 does not apply to this shipment because it was not "reforwarded" from Minneapolis, within the meaning of the rule, which they urge requires reshipping, and not merely reconsigning; also that, in any event, the rule provides, at most, for a second rate, and the shipper is entitled, under our tariff regulations, to the lower rate resulting from the publication of the rate to Duluth without routing restrictions.

The Northern Pacific shows that the normal and universal routing of shipments tendered without routing instructions is through Brainerd, and not through Minneapolis; that in the tariff naming the rates to Duluth rates to points between Minneapolis and Duluth, directly intermediate to Duluth, are made 4.5 cents higher than to Minneapolis and Duluth; and that under the complainants' interpretation of the tariff there would be a violation of the long-and-short-haul clause of the fourth section of the act.

This shipment was "reforwarded," within the meaning of rule 33. The specification as to reforwarding in the original car, and on the original waybill, is sufficient evidence of the continuity of the original shipment. A reshipped car, or separate shipment within complainants' view, would move under the local rate of 13 cents from Minneapolis to Duluth. The effect of rule 33 is not to provide an additional rate from the original point of shipment to Duluth, but is specifically to supersede, or supplement, the other general provision of the same tariff for a 48-cent rate to Minneapolis and Duluth. In Pioneer Lumber Co. vs. Director General, supra, there was no rule 33, or its equivalent. Also it there appeared that, unlike the present case, "in the past the Northern Pacific tariffs [fol. 60] have specifically provided for the application of the Duluth rates through that point." There is the same general difference between the present case and Independent Elevator Co. vs. M., St. P. & S. S. M. Ry. Co., 73 I. C. C. 521. It must be found that the rate applicable

on this shipment was 54.5 cents, which was the rate charged.

The shipments over the Soo Line were from Bismarck, N. Dak., to Duluth, and from Hoffman, Carlos, and Brooten, Minn., to Superior. The rates were 23.5 cents to Minneapolis and Duluth from Bismarck; 12 cents to Minneapolis and 14 cents to Superior from Brooten; 13 cents to Minneapolis and 14 cents to Superior from Carlos; and 13 cents to Minneapolis and 14.5 cents to Superior from Hoffman. The distance through Minneapolis was 80 miles greater than over the direct line in each instance. The tariff of the Soo Line contained a provision substantially similar to rule 38 of the Northern Pacific, in respect of the addition of 6.5 cents beyond Minneapolis on shipments reforwarded from Minneapolis. It also provided for rates to points between Minneapolis and Duluth higher than over the direct route to Duluth. The situation on the Soo Line is substantially the same as on the Northern Pacific, and the conclusion reached concerning the shipment over the latter route governs the shipments over the Soo Line, which were charged the rates applicable.

The shipments over the Great Northern were very similar to those in No. 16576. They moved from Portland Junction and Buxton, N. D., to Duluth, and from Murray and Hatton, N. D., to Superior. The short-line distances ranged from 322 to 354 miles, and the distances through Minneapolis from 428 to 445 miles, additional distances through Minneapolis ranging from 75 to 112 miles, or from 21 to 35 per cent. The rates applicable to Duluth, Superior, and Minneapolis were 17.5 cents from Hatton, Portland Junction, and Murray, and 16.5 cents from Buxton. The Great Northern tariff did not provide for any addition to the direct rate to Duluth or Superior for transportation beyond Minneapolis. It did provide for rates to points between Minneapolis and Duluth higher than to Duluth.

The Great Northern here contends that tariffs are to be construed in the same way as any other legal document, in accordance with their evident intent, and that the intention of the Great Northern to restrict the Duluth rate to the direct route is evidenced by the general custom of years, [fol. 61] acquiesced in by shippers, by the publication of higher rates to points between Minneapolis and Duluth

than to Duluth, and by its tariff provision for the application of the direct rate over indirect routes in certain instances specifically referred to of record.

The intent of a tariff is not superior to its terms, applied within reason. The absence of routing restrictions and of any addition to that rate provided by tariff, such as the Northern Pacific provided for in its rule 33, made the Duluth rate applicable over any open route designated by the shipper.

We find that complainants in Nos. 16576, 16466 (Sub. No. 1), 16466 (Sub-No. 2), and 16466 (Sub-No. 5), made shipments over the Great Northern and paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the applicable rate; and that they are entitled to reparation, with interest. They should comply with Rule V of the Rules and Practice.

TAYLOR, Commissioner, dissenting:

I do not agree with the majority in their finding that the through rates from the points of origin in question to Duluth and Superior, without the additional 6 or 6.5 cents beyond Minneapolis, were applicable on the shipments moving through Minneapolis over the Great Northern.

I am unable to accept complainants' view that, in the absence of routing restrictions, a shipper has the right to route his traffic when moving over only one line by any route he may select, no matter how circuitous. As illustrated in the record, they insist that if a rate from Granville to Genoa, N. Dak., a distance of 21 miles, was unrestricted as to routing, the shipper could route his traffic via Superior and Minneapolis requiring a haul of 1,100 miles. I am opposed to upholding such a contention, and believe that even where rates are unrestricted as to routing, the shippers must use reasonably direct routes. In the instant case the reasonably direct route was via Willmar and St. Cloud, Minn., and not through Minneapolis involving materially greater hauls and expensive terminal handling at that point.

Paragraph 8 of section 15 confers upon the shipper the right to designate routing of his traffic where joint-line hauls are involved and two or more through routes and

through rates are available. It does not confer this au-
[fol. 62] thority upon the shipper where, as in this case, the movements are over a single line.

To have maintained the through rates from Buxton and other originating points to Superior and Duluth via Minneapolis would have resulted in fourth-section violations at intermediate points between Minneapolis and Superior and Duluth. I am of the opinion that the tariff should be interpreted in such a way as not to produce the unlawful result of a fourth-section violation. The record shows that for many years prior to the movement of the shipments in question the carriers uniformly charged, on similar shipments, the combination rates, consisting of the rate to Minneapolis and the proportional beyond, without protest from the shipper.

By the Commission, Division 3.

George B. McGinty, Secretary. (Seal.)

(Endorsed:) Filed Apl. 19, 1929, Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

DEFENDANT'S EXHIBIT 1

INTERSTATE COMMERCE COMMISSION

Before the Interstate Commerce Commission

Docket No. 16576, Filed Dec. 4, 1924

DELMAR COMPANY

vs.

GREAT NORTHERN RAILWAY COMPANY

COMPLAINT FILED BEFORE INTERSTATE COMMERCE COMMISSION

I

The complaint at the time hereinafter mentioned was, and still, is a corporation organized and existing under the Laws of the State of Delaware, with its principal office at Minneapolis, Minnesota. That it is engaged in the busi-

ness of handling, storing, selling and buying grain, and grain products at Minneapolis, Minnesota, and other points.

[fol. 63]

II

That the defendant above named is, and at all times hereinafter mentioned was a common carrier engaged in the transportation of property, wholly by railroad, between points in the States of Wisconsin, Minnesota, North and South Dakota and between other places, and as such common carrier is subject to the provisions of the Interstate Commerce Act.

III

That on, or about August 31, 1922, there was delivered to defendant at Howes Siding, North Dakota 69870 lbs. of wheat in car GN 207183, which was transported to Minneapolis, Minnesota, and there inspected and graded by Minnesota State Inspectors, and purchased by complainant on track; original bill of lading or other proof of ownership being surrendered by complainant to defendant with an exchange bill of lading, reconsigning said car to Delmar Company in care of A. D. Thomson Co. at Great Northern Elevator "S" Superior, Wisconsin; bill of lading "reading" Thru Rate O W B per G. N. Tariff I C C No. A-5588 open route; rate applicable via all Jcts." or similar wording, and was so receipted by defendants Joint Agent, Authority for reconsignment being then carried in defendant tariff I C C No. A-5348, supplement 2 rule 14-A and through rate of 17½¢ per cwt. Howes, North Dakota, to Superior, Wisconsin, being shown in defendants tariff I C C No. A-5588 index No. 487 with no routing restrictions, or specific routing, therefore, rate was, and is applicable via any workable route in accordance with Interstate Commerce Commission Tariff Circular No. 18-A rule 4 (j) and many formal and informal rulings. Defendant collected and retained charges to the amount of 24¢ per cwt. or $45.42 in excess of legal tariff charges.

IV

That on, or about August 30th, 1922, there was delivered to defendant at Rogers, Minnesota, 67650 lbs. of Rye in W. P. car 15167, which was transported to Minneapolis, Min-

nesota, and there handled in all cases the same as the car in the next preceding paragraph (III) except that defendant collected and retained charges to the amount of 12½¢ per cwt. while tariff names a thru rate of 12¢ -er cwt. under index 134.

V

That on, or about July 24, 1922, there was delivered to defendants at Litchfield, Minnesota, 74310 lbs. of corn in G. [fol. 64] N. car No. 13923, which was transported to Minneapolis, Minnesota and there handled in all cases the same as the car in paragraph III above, except that defendant collected and retained charges to the amount of 14½¢ per cwt. while tariff names a thru rate of 14¢ per cwt. under index No. 298.

VI

That on, or about June 23, 1922, there was delivered to defendant at Appleton, Minnesota 69110 lbs. of corn in G. N. car No. 23219 which was transported to Minneapolis, Minnesota and there handled in all cases the same as car in paragraph (III) above; except that defendant collected and retained charges to the amount of 17½¢ per cwt. while tariff names a thru rate of 16¢ under index No. 357.

VII

That on, or about September 10th, 1922 there was delivered to defendant at Holloway, Minnesota 75000 lbs. of oats in CP car No. 290056, which was transported to Minneapolis, Minnesota and there handled in all cases the same as the car in paragraph III above, except that defendant collected and retained charges to the amount of 17½¢ per cwt. while tariff names a thru rate of 15½¢ under index 356.

VIII

That on, or about May 24th, 1922, there was delivered to defendant at Kerkhoven, Minnesota 85810 lbs. of corn in G. N. car No. 21654; 89340 lbs. in G N car No. 22916; and 66460 lbs. in GN car 206883, which was transported to Minneapolis, Minnesota and there handled in all cases the same as car in paragraph III above, except that defendant collected and retained charges to the amount of 17c per cwt. while defendants tariff ICC No. A-5234 (which was then in

effect) names a thru rate of 15¢ under index 351 as amended.

IX

That on, or about, June 1st, 1922, there was delivered to defendant at Albee, South Dakota 94340 lbs. of corn in G. N. car No. 11559, which was transported to Minneapolis, Minnesota and there handled in all cases the same as car in paragraph II above, except that defendant collected and retained charges to the amount of 19¢ per cwt. while tariff names a thru rate of 17½¢ under index 361.

X

That on, or about August 19th, 1922 there was delivered to defendant at Burch, South Dakota, 79630 lbs. of wheat in [fol. 65] G. N. car No. 24717, and on or about August 21st 82310 lbs. of wheat in G. N. car No. 127839, which was transported to Minneapolis, Minnesota, and there handled the same in all cases as car in paragraph (II) above; except that defendant collected and retained charges to the amount of 27¢ per cwt. while tariff names a thru rate of 22½¢ under index 417.

XI

That on, or about August 31st, 1922 there was delivered to defendant at Grover, South Dakota 85910 lbs. of wheat in G. N. car No. 24799; and on or about September 4th, 86410 lbs. of wheat in G. N. car No. 34672; which was transported to Minneapolis, Minnesota, and there handled in all cases the same as car in paragraph (III) above except that defendant collected and retained charges to the amount of 26¢ per cwt. while tariff names a thru rate of 24½¢ under index 368.

XII

That on or about May 5th, 1922 there was delivered to defendant at Osceola, South Dakota, 86450 lbs. of corn in G. N. car No. 24369; which was transported to Minneapolis, Minnesota and there handled in all cases the same as car in paragraph (III) above, except that defendant collected and retained charges to the amount of 25¢ per cwt. while defendant tariff ICC No. A-5234 (which was then in effect) names a thru rate of 24¢ under index 373.

XIII

That on or about August 22nd, 1922 there was delivered to defendant at Plana, South Dakota, 88510 lbs. of wheat in G. N. car No. 17426 which was transported to Minneapolis, Minnesota and there handled in all cases the same as car in paragraph (III) above except that defendant collected and retained charges to the amount of 27½¢ per cwt. while tariff names a thru rate of 24¢ under index 422.

XIV

That on or about August 26, 1922, there was delivered to Complainant at Putney, South Dakota 84560 lbs. of wheat in PRR car No. 22491; on or about August 19th 94140 lbs. in GN Car No. 16337 and 89340 lbs. in GN car No. 122761. On or about August 25th, 26th, and 28th 87860 lbs. of wheat in G. N. car No. 24011; 97470 lbs. of wheat in GN car No. 18690; 72490 lbs. of wheat in GN car No. 205070 and 90720 lbs. of wheat in G. N. car No. 123988; all of which was [fol. 66] transported to Minneapolis, Minnesota and there handled the same as car in paragraph (III) above except that defendant collected and retained charges to the amount of 27½¢ per cwt. on all wheat except 89340 lbs. in G. N. car No. 122761, on which defendant collected and retained 33½¢ per cwt. while tariff names a thru rate of 24¢ under index 421.

XV

That on or about May 25th, 1922 there was delivered to defendant at Sheffield, South Dakota 61110 lbs. of corn in GN car No. 505918 which was transported to Minneapolis, Min-esota, and there handled in all cases the same as paragraph (III) above, except that defendant collected retained charges to the amount of 25¢ per cwt. while defendants tariff ICC No. A-5234 (which was then in effect) names a thru rate of 24¢ under index 375.

XVI

That on or about August 21st, 1922 there was delivered to defendant at Rauville, South Dakota, 99600 lbs. of wheat in G. N. car No. 16563, which was transported to Minneapolis, Minnesota, and there handled in all cases the same as in paragraph (III) above, except that defendant col-

lected and retained charges to the amount of 24½¢ per cwt. while tariff names a thru rate of 23¢ under index 366.

XVII

That on, or about August 21st, 1922, there was delivered to defendant at Tacoma Park, South Dakota, 87460 lbs. of wheat in G. N. car No. 300101, and on or about August 30th, 1922 89710 lbs. of wheat in G. N. car No. 121211; which was transported to Minneapolis, Minnesota and there handled in all cases the same as car in paragraph (II) above except that defendant collected and retained charges to the amount of 27½¢ per cwt. while tariff names a thru rate of 24¢ under index 422, Plana; Tacoma Park being located 3 miles east thereof and under intermediate application rule on page 10 Plana rate applicable.

XVIII

That on or about May 3rd, 1922, there was delivered to defendant at Willow Lakes, South Dakota, 63080 lbs. of corn in G. N. car No. 207280; on or about May 25th, 65080 lbs. of corn in G. N. car No. 22531, on or about July 10th, 88570 lbs. of corn in G. N. car No. 124650 and 87960 lbs. of corn in GN car No. 126213; on or about July 28th, 93440 lbs. of corn in GN car No. 125360, and on or about Septem-
[fol. 67] ber 1st, 98210 lbs. of wheat in GN car No. 34719; all of which was transported to Minneapolis, Minnesota and there handled the same in all cases as car in paragraph (III) above except that defendant collected and retained charges to the amount of 24¢ on the corn and 26½¢ on the wheat while tariff names a thru rate of 22¢ on corn and 24½¢ on wheat under index 371 (Defendants tariff ICC No. A-5234 governing the first two cars in this paragraph and tariff ICC No. A-5588 balance).

XIX

That defendant has collected from complainant and retained charges in excess of legal tariff rates on various other carloads of grain in addition to the above enumerated cases; which amounts are undeterminable at this time owing to the fact that defendant refuses to pay admittedly

due overcharges; therefore, complainant requests that same may be made part of this complaint.

XX

That complainant has in all cases either directly or thru their Agent paid, and in all cases bore the above alleged overcharges.

XXI

That by reason of the facts stated in the foregoing paragraphs complainant has been subjected to the payment of rates, and charges for transportation which when exacted and still are illegal in violation of section 6 of the Interstate Commerce Act. That complainant has been injured thereby to their damage in the sum of $731.48 and such other amount as may be determined.

Wherefore complainant prays that defendant may be required to answer the charges herein; and that after due hearing and investigation an order be made commanding said defendant to cease and desist from the aforesaid violations of said act, and apply in future to the transportation of grain between the origin and destination points named in paragraph III to XX hereof legal and reasonable rates; and also pay to complainant by way of overcharge reparation for the unlawful charges hereinafter alleged the sum of $731.48 with interest or such other sum as, in view of the evidence to be adduced herein, the Commission shall determine that complainant is entitled to as an award for damages under the provision of said act for violation thereof, and that such other and further order or orders be made as the Commission may consider proper in the premises.

[fol. 68] Filed in accordance with paragraph (3) Section (16) Interstate Commerce Act as amended June (7th) 1924.

Dated at Minneapolis, Minnesota, Dec. 2nd, 1924.

Delmar Company, by J. F. Adams, T. Mgr., 502 Flour Exc.

(Endorsed:) Filed Apl. 19, 1929. Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

DEFENDANT'S EXHIBIT 2

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 16,576

DELMAR COMPANY, Plaintiff,

vs.

GREAT NORTHERN RAILWAY COMPANY, Defendant

Answer of Great Northern Railway Company

Defendant for answer to the complaint in this proceeding respectfully states:

1. Admits that it is a corporation engaged in business as a common carrier, as alleged in the complaint.

2. Refers to the tariffs covering the rates named in the complaint and to all other tariffs applicable for a correct statement of the rates referred to or complained of herein, and admits the said rates so far as the same appear in said tariffs.

3. Denies that it has violated or is v-olating any *any* of the statutes or laws of the United States, or that anything done or omitted by it with respect to the subject matter of the said complaint is in violation of law; denies that any of the rates referred to in said complaint are unreasonable, prejudicial, discriminatory or unlawful, or that complainant has been charged or has paid any unreasonable prejudicial, discriminatory or unlawful charges, and denies that it should be subject to any adverse order, and denies that the complainant is entitled to the relief prayed for or any other relief.

4. Each and every allegation of the complaint not hereinbefore admitted is hereby specifically denied.

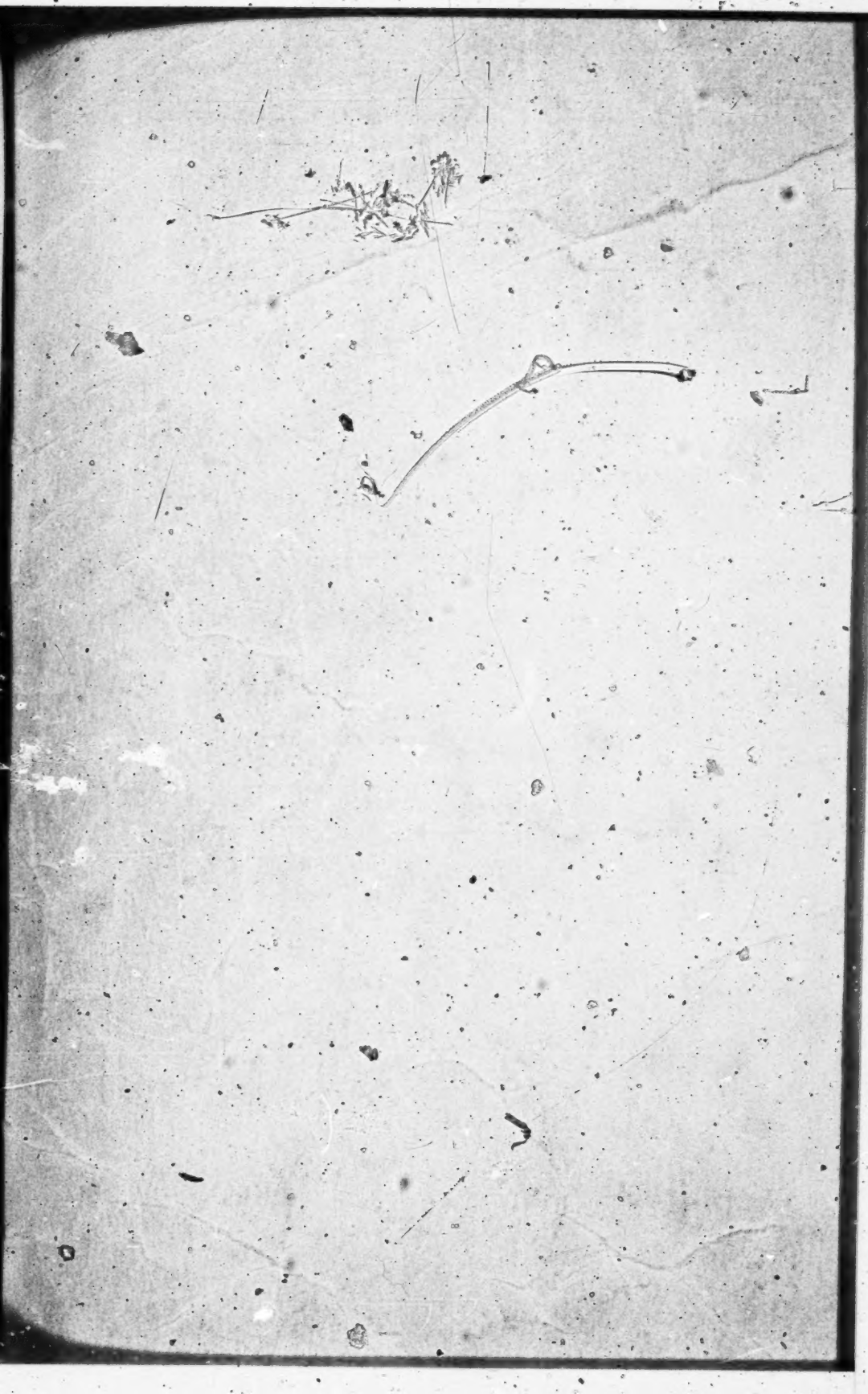
[fols. 69 & 70] Wherefore Defendant prays that the complaint in this proceeding be dismissed.

Dated February 7, 1925.

R. J. Hagman, Attorney for Defendant, 1120 Great Northern Building, Saint Paul, Minnesota.

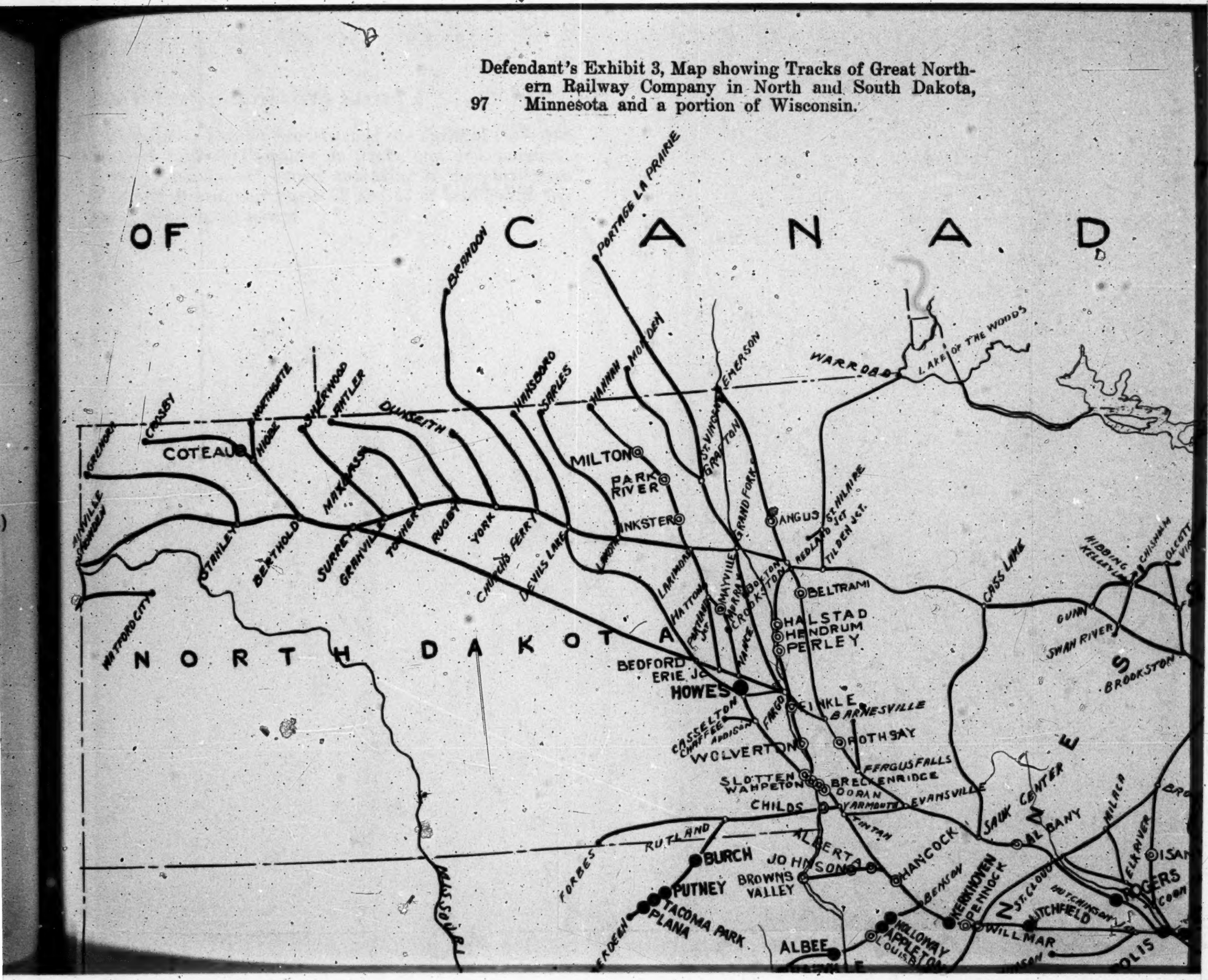
(Endorsed:) Filed Apl. 19, 1929. Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

(Here follows Defendant's Exhibit 3, side folios 71 and 72.)



Defendant's Exhibit 3, Map showing Tracks of Great Northern Railway Company in North and South Dakota, Minnesota and a portion of Wisconsin.

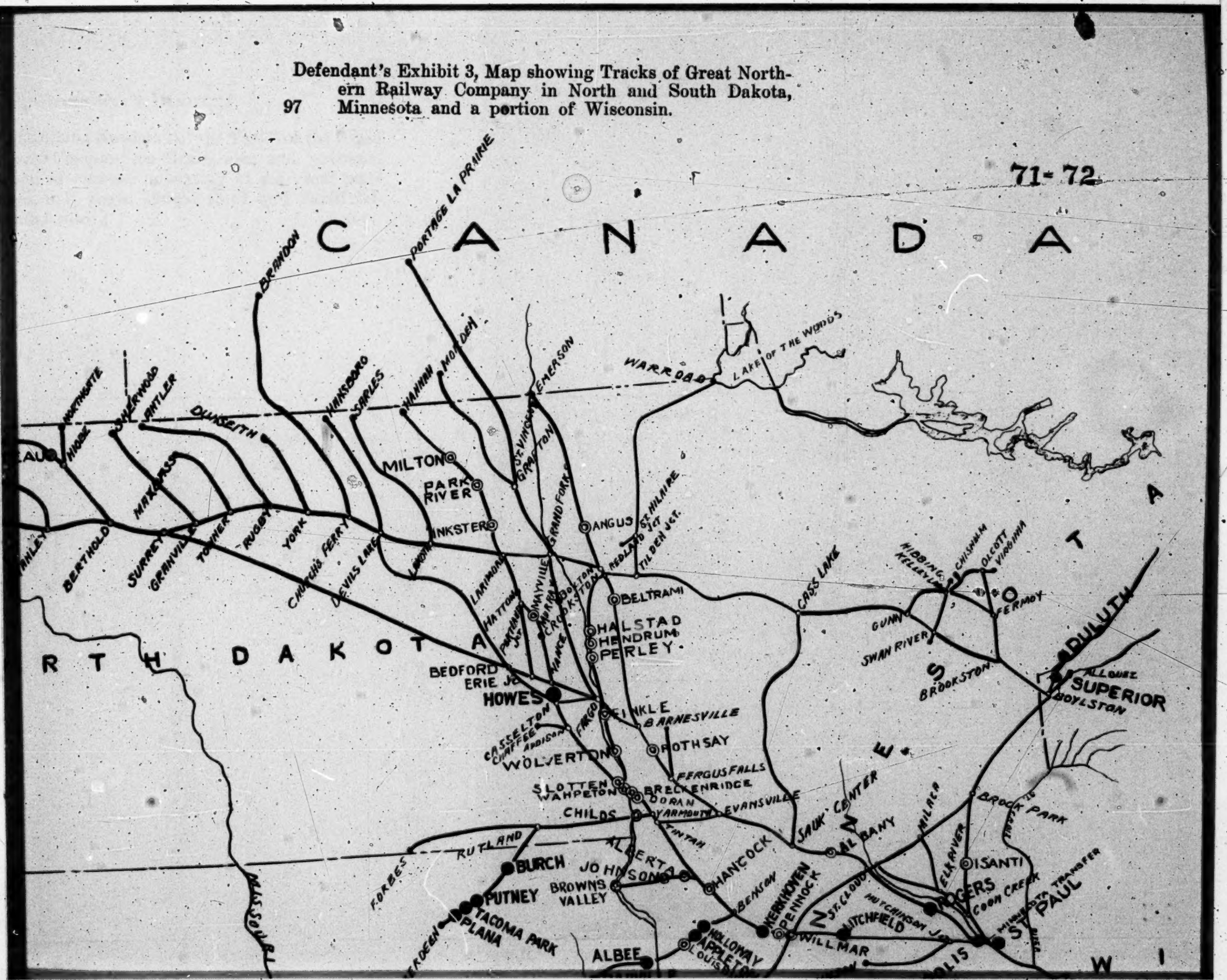
97

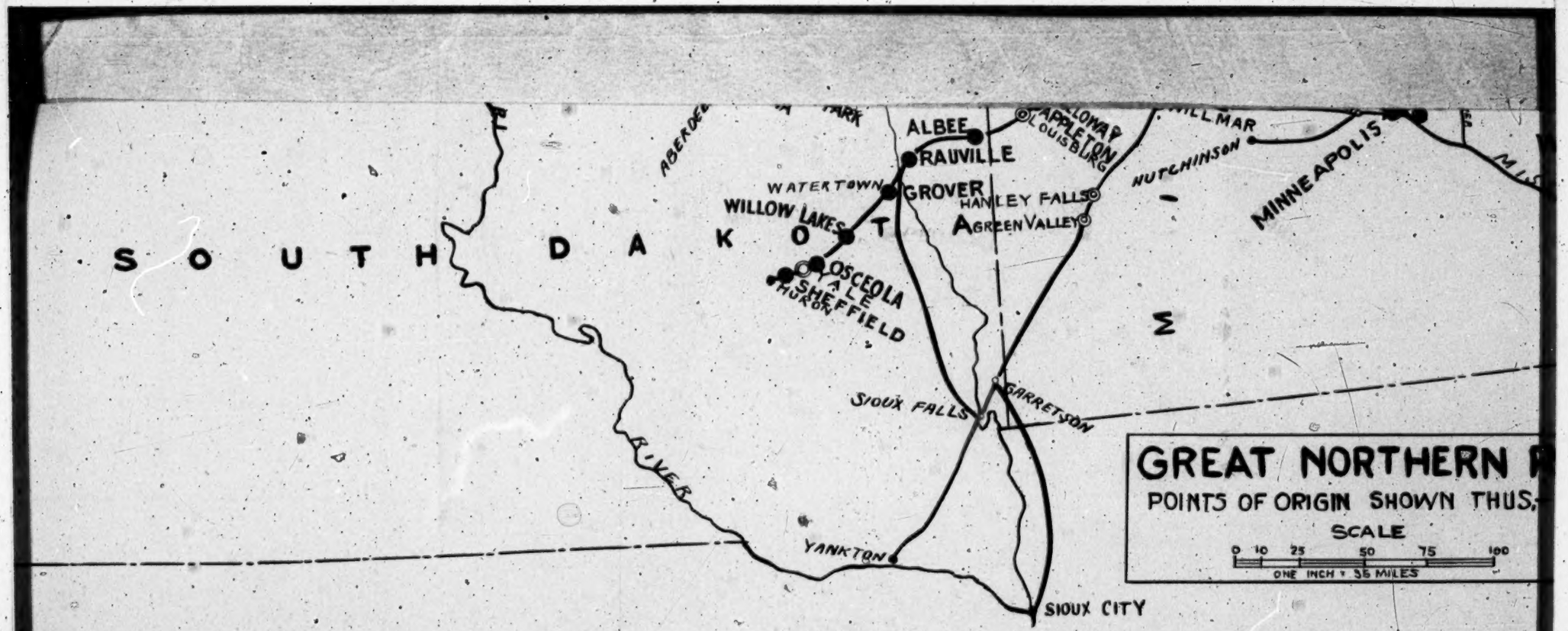


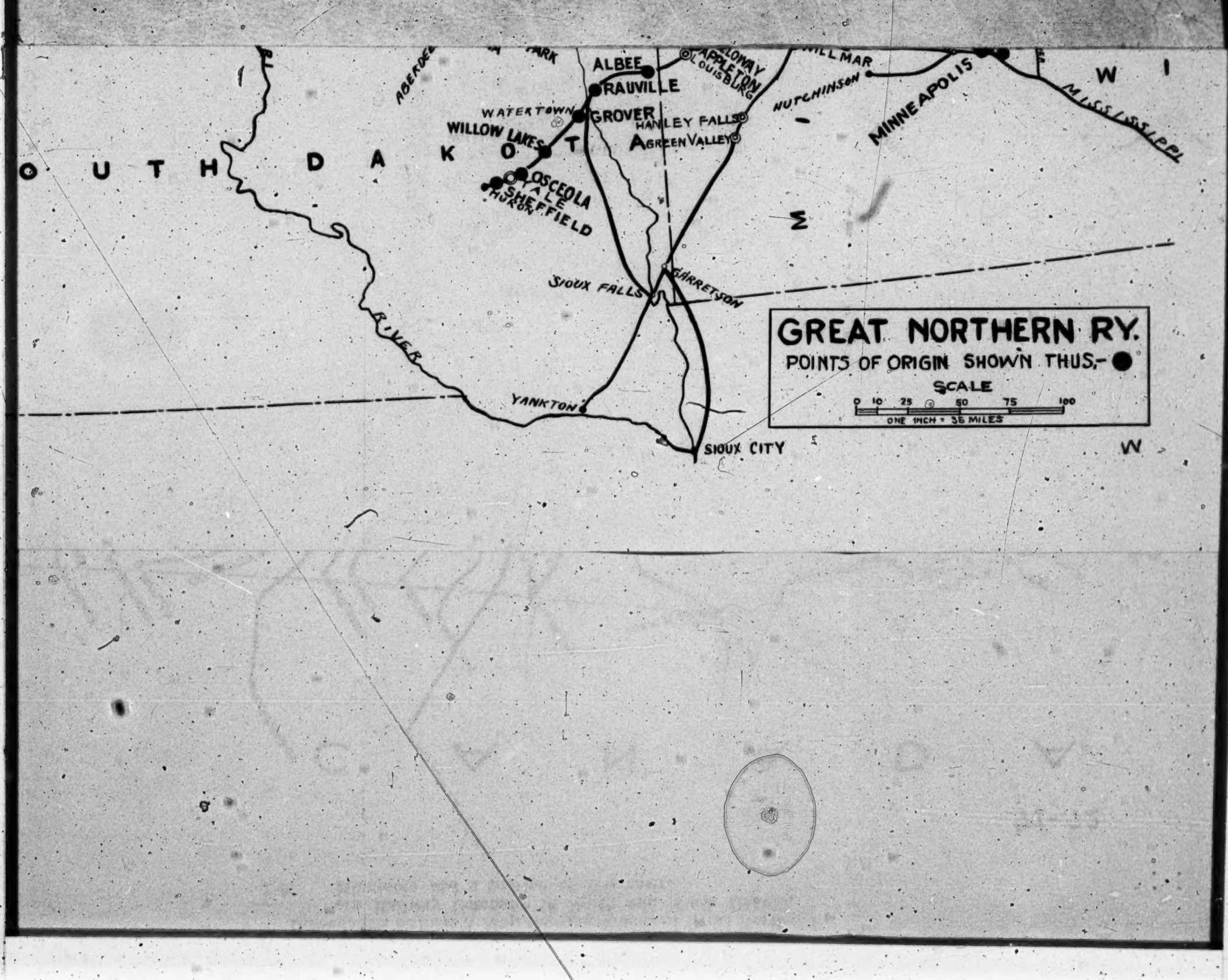
Defendant's Exhibit 3, Map showing Tracks of Great Northern Railway Company in North and South Dakota, Minnesota and a portion of Wisconsin.

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71-72




ALBEE
RAUVILLE
WATERTOWN
GROVER
WILLOW LAKES
OSCEOLA
ALE
SHEFFIELD
HURON
HANLEY FALLS
GREEN VALLEY
APPLETON
LOUISBURG
WILLMAR
NUTCHINSON
MINNEAPOLIS
SIOUX FALLS
GARRETSON
YANKTON
SIOUX CITY
RIVER
GREAT NORTHERN
POINTS OF ORIGIN SHOWN THUS.
SCALE
0 10 25 50 75 100
ONE INCH = 35 MILES


ALBEE
RAUVILLE
WATERTOWN
GROVER
WILLOW LAKES
HANLEY FALLS
GREEN VALLEY
OSCEOLA
HURON
SHEFFIELD
SIOUX FALLS
GARRETSON
YANKTON
SIOUX CITY
NUTCHINSON
MINNEAPOLIS
MISSISSIPPI
RIVER
GREAT NORTHERN RY.
POINTS OF ORIGIN SHOWN THUS.-
SCALE
0 10 25 50 75 100
ONE INCH = 35 MILES



[fols. 73 & 74] DEFENDANT'S EXHIBIT 4

Defendant's Exhibit 4 consisted of the Tariff of the Great Northern Railway Company on Grain, etc., and, pursuant to the stipulation of counsel appearing at marginal page 81 of this record, only pages 39 and 43 of said Tariff follow in this printed record.

(Here follows exhibit, side folios 75 & 76 and 77 & 78.)



SECTION 1. GENERAL RATES—Continued.

Index No.	BETWEEN		AND St. Paul, Minnesota Transfer or Minneapolis, Minn. (See notes 1 to 16, pages 13 to 17.)			AND Duluth, Cloquet, Minn., or Superior, Wis. (See notes 1 to 16 pages 13 to 17.)		
			Flaxseed and articles taking same rates, as per W. T. L. Rules, Circular No. 1-P, I. C. C. No. A-1203, of E. B. Boyd, Agent, supplements thereto and reissues thereof.	Wheat Wheat Flour and articles taking same rates, as per W. T. L. Rules, Circular No. 1-P, I. C. C. No. A-1203, of E. B. Boyd, Agent, supplements thereto and reissues thereof.	Corn, Rye, Oats, Barley and articles taking same rates, as per W. T. L. Rules, Circular No. 1-P, I. C. C. No. A-1203, of E. B. Boyd, Agent, supplements thereto and reissues thereof.	Flaxseed and articles taking same rates, as per W. T. L. Rules, Circular No. 1-P, I. C. C. No. A-1203, of E. B. Boyd, Agent, supplements thereto and reissues thereof.	Wheat Wheat Flour and articles taking same rates, as per W. T. L. Rules, Circular No. 1-P, I. C. C. No. A-1203, of E. B. Boyd, Agent, supplements thereto and reissues thereof.	Corn, Rye, Oats, Barley and articles taking same rates, as per W. T. L. Rules, Circular No. 1-P, I. C. C. No. A-1203, of E. B. Boyd, Agent, supplements thereto and reis-ues thereof.
			RATES IN CENTS PER 100 LBS.					
345	† Dalton	Iowa	25	18	16	31	23	20½
346	† Merrill	"	25	18	16	31	23	20½
347	† Hinton	"	25	18	16	31	23	20½
349	†*Leeds	"	25	18	16	31	23	20½
350	† Sioux City	"	25	ⓓ 18	ⓓ 16	31	ⓓ 23	ⓓ 20½
350a	†*Level Siding	S. D.	27	19½	17½	34	26½	24
350b	† Crooks	"	27	19½	17½	34	26½	24
350c	† Lyons	"	27	19½	17½	34	26½	24
350d	† Colton	"	27	19½	17½	34	26½	24
350e	†*Huntimer	"	27	19½	17½	34	26½	24
350f	† Chester	"	27	19½	17½	34	26½	24
350g	† Wentworth	"	27	19½	17½	34	26½	24
350h	† Rutland	"	27	19½	17½	34	26½	24
350i	† Nunda	"	27	19½	17½	34	26½	24
350j	† Sinai	"	27	19½	17½	34	26½	24
350k	†*Como	"	27	19½	17½	34	26½	24
350l	† Arlington	"	27	19½	17½	34	26½	24
350m	†*Royhl	"	27	19½	17½	34	26½	24
350n	† Badger	"	27	19½	17½	34	26½	24
350o	† Lake Norden	"	27	19½	17½	34	26½	24
350p	† Hayti	"	27	19½	17½	34	26½	24
350q	† Thomas	"	27	19½	17½	34	26½	24
350r	†*Foley	"	27	19½	17½	34	26½	24

Index No.	BETWEEN		AND St. Paul, Minnesota Transfer or Minneapolis, Minn. (See Notes 1 to 16 pages 13 to 17)			AND Duluth, Minn., or Superior, Wis. (See Notes 1 to 16 pages 13 to 17)		
			Flaxseed and other articles listed in Group A, page 11.	Wheat and other articles listed in Group B, page 11.	Corn and other articles listed in Group C, page 11.	Flaxseed and other articles listed in Group A, page 11.	Wheat and other articles listed in Group B, page 11.	Corn and other articles listed in Group C, page 11.
			RATES IN CENTS PER 100 LBS.					
350s	Pennock	Minn.	13½	12	11	18	16	14½
351	Kerkhoven	"	13½	12	11	19	16½	15
352	Murdock	"	13½	12	11	19	16½	15
353	De Graff	"	14	12½	11½	19	16½	15
354	Benson	"	14	12½	11½	19	16½	15
355	Danvers	Minn.	14	12½	11½	19½	17	15½
356	Halloway	"	14	12½	11½	19½	17	15½
357	Appleton	"	15	13	11½	19½	17½	16
358	Louisburg	"	15	13	11½	20½	17½	16
359	Bellingham	"	15	13	11½	20½	17½	16
360	Nassau	"	15½	13½	12	20½	18	16

ⓓFor proportional rates on shipments originating beyond, see W. F. T. B. Tariff No. 157-C, I. C. C. No. A-1163 (issued by E. B. Boyd, Agent), G. N. C. F. O. No. 1669-D, supplements thereto and reissues thereof.
*No Agent. Freight charges must be prepaid.
†Rates applying between these stations and St. Paul, Minneapolis and Minnesota Transfer will also apply between these stations and St. Cloud, Minn.

SECTION 1. GENERAL RATES—Continued.

Index No.	BETWEEN	AND: St. Paul, Minnesota Transfer or Minneapolis, Minn. (See Notes 1 to 16, pages 13 to 17.)			AND: Duluth, Minn., or Superior, Wis. (See Notes 1 to 16, pages 13 to 17.)		
		Flaxseed and other articles listed in Group D, page 11.	Wheat and other articles listed in Group E, page 11.	Corn and other articles listed in Group F, page 11.	Flaxseed and other articles listed in Group D, page 11.	Wheat and other articles listed in Group E, page 11.	Corn and other articles listed in Group F, page 11.
		RATES IN CENTS PER 100 LBS.					
467	Clifford.....N. D.	21	17½	16	21	17½	16
468	*Roseville..... "	21	17½	16	21	17½	16
469	Portland..... "	21	17½	16	21	17½	16
470	Absaraka.....N. D.	21	17½	16	21	17½	16
471	Ayr..... "	22½	18	16	22½	18	16
471-A	*Dartmoor..... "	23	19½	17½	23	19½	17½
472	Page..... "	23½	19½	17½	23½	19½	17½
473	Colgate..... "	23½	19½	17½	23½	19½	17½
474	Hope..... "	23½	19½	17½	23½	19½	17½
475	Blabon..... "	23½	19½	17½	23½	19½	17½
476	Finley..... "	23½	19½	17½	23½	19½	17½
477	Sharon..... "	23½	19½	17½	23½	19½	17½
478	Aneta..... "	23½	19½	17½	23½	19½	17½
479	Kloten..... "	23½	19½	17½	23½	19½	17½
480	McVille..... "	23½	19½	17½	23½	19½	17½
481	Pekin..... "	23½	19½	17½	23½	19½	17½
482	Tolna..... "	23½	19½	17½	23½	19½	17½
483	Hamar..... "	23½	19½	17½	23½	19½	17½
484	Warwick..... "	23½	19½	17½	23½	19½	17½
485	Tokio..... "	23½	19½	17½	23½	19½	17½
486	Narrows..... "	23½	19½	17½	23½	19½	17½
487	*Howes.....N. D.	20½	17½	16	20½	17½	16
488	Amenia..... "	20½	17½	16	20½	17½	16
489	Arthur..... "	20½	17½	16	20½	17½	16
490	Hunter..... "	20½	17½	16	20½	17½	16
491	*Greenfield..... "	20½	17½	16	20½	17½	16
492	*Preston..... "	20½	17½	16	20½	17½	16
493	Blanchard..... "	20½	17½	16	20½	17½	16
494	*Volga..... "	20½	17½	16	20½	17½	16
495	*Murray..... "	20½	17½	16	20½	17½	16
496	Mayville..... "	20½	17½	16	20½	17½	16
497	*Ames..... "	20½	17½	16	20½	17½	16
498	*Portland Jct..... "	20½	17½	16	20½	17½	16
499	Hatton..... "	20½	17½	16	20½	17½	16
500	Northwood..... "	20½	17½	16	20½	17½	16
501	Kempton..... "	20½	17½	16	20½	17½	16
502	Fargo.....N. D.	19	16½	15	19	16½	15
502a	*Reed..... "	19	16½	15	19	16½	15
502b	Prosper..... "	19½	17	15½	19½	17	15½
502c	*Vance..... "	20½	17½	16	20½	17½	16
502e	*Bedford..... "	23½	19½	17½	23½	19½	17½
502f	*Walden..... "	23½	19½	17½	23½	19½	17½
502g	Pillsbury..... "	23½	19½	17½	23½	19½	17½
502h	Luverne..... "	23½	19½	17½	23½	19½	17½
502	Karnak..... "	24½	20	18	24½	20	18
502j	Hannaford..... "	24½	20	18	24½	20	18
502k	Revere..... "	24½	20	18	24½	20	18
502l	Sutton..... "	24½	20	18	24½	20	18
502m	Glenfield..... "	24½	20	18	24½	20	18
502n	Juanita..... "	24½	20	18	24½	20	18
502o	Grace City..... "	24½	20	18	24½	20	18
502p	Brantford..... "	24½	20	18	24½	20	18
502q	*Dundas..... "	24½	20	18	24½	20	18
502r	New Rockford..... "	24½	20	18	24½	20	18

See note Sp 14

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SECTION 1. GENERAL RATES—Continued.

Index No.	BETWEEN	AND: St. Paul, Minnesota Transfer or Minneapolis, Minn. (See Notes 1 to 16, pages 13 to 17.)			AND: Duluth, Minn., or Superior, Wis. (See Notes 1 to 16, pages 13 to 17.)		
		Flaxseed and other articles listed in Group D, page 11.	Wheat and other articles listed in Group E, page 11.	Corn and other articles listed in Group F, page 11.	Flaxseed and other articles listed in Group D, page 11.	Wheat and other articles listed in Group E, page 11.	Corn and other articles listed in Group F, page 11.
		RATES IN CENTS PER 100 LBS.					
467	Clifford.....N. D.	21	17½	16	21	17½	16
468	*Roseville..... "	21	17½	16	21	17½	16
469	Portland..... "	21	17½	16	21	17½	16
470	Absaraka.....N. D.	21	17½	16	21	17½	16
471	Ayr..... "	22½	18	16	22½	18	16
471-A	*Dartmoor..... "	23	19½	17½	23	19½	17½
472	Page..... "	23½	19½	17½	23½	19½	17½
473	Colgate..... "	23½	19½	17½	23½	19½	17½
474	Hope..... "	23½	19½	17½	23½	19½	17½
475	Blabon..... "	23½	19½	17½	23½	19½	17½
476	Finley..... "	23½	19½	17½	23½	19½	17½
477	Sharon..... "	23½	19½	17½	23½	19½	17½
478	Aneta..... "	23½	19½	17½	23½	19½	17½
479	Kloten..... "	23½	19½	17½	23½	19½	17½
480	McVille..... "	23½	19½	17½	23½	19½	17½
481	Pekin..... "	23½	19½	17½	23½	19½	17½
482	Tolna..... "	23½	19½	17½	23½	19½	17½
483	Hamar..... "	23½	19½	17½	23½	19½	17½
484	Warwick..... "	23½	19½	17½	23½	19½	17½
485	Tokio..... "	23½	19½	17½	23½	19½	17½
486	Narrows..... "	23½	19½	17½	23½	19½	17½
487	*Howes.....N. D.	20½	17½	16	20½	17½	16
488	Amenia..... "	20½	17½	16	20½	17½	16
489	Arthur..... "	20½	17½	16	20½	17½	16
490	Hunter..... "	20½	17½	16	20½	17½	16
491	*Greenfield..... "	20½	17½	16	20½	17½	16
492	*Preston..... "	20½	17½	16	20½	17½	16
493	Blanchard..... "	20½	17½	16	20½	17½	16
494	*Volga..... "	20½	17½	16	20½	17½	16
495	*Murray..... "	20½	17½	16	20½	17½	16
496	Mayville..... "	20½	17½	16	20½	17½	16
497	*Ames..... "	20½	17½	16	20½	17½	16
498	*Portland Jct..... "	20½	17½	16	20½	17½	16
499	Hatton..... "	20½	17½	16	20½	17½	16
500	Northwood..... "	20½	17½	16	20½	17½	16
501	Kempton..... "	20½	17½	16	20½	17½	16
502	Fargo.....N. D.	19	16½	15	19	16½	15
502a	*Reed..... "	19	16½	15	19	16½	15
502b	Prosper..... "	19½	17	15½	19½	17	15½
502c	*Vance..... "	20½	17½	16	20½	17½	16
502e	*Bedford..... "	23½	19½	17½	23½	19½	17½
502f	*Walden..... "	23½	19½	17½	23½	19½	17½
502g	Pillsbury..... "	23½	19½	17½	23½	19½	17½
502h	Luverne..... "	23½	19½	17½	23½	19½	17½
502	Karnak..... "	24½	20	18	24½	20	18
502j	Hannaford..... "	24½	20	18	24½	20	18
502k	Revere..... "	24½	20	18	24½	20	18
502l	Sutton..... "	24½	20	18	24½	20	18
502m	Glenfield..... "	24½	20	18	24½	20	18
502n	Juanita..... "	24½	20	18	24½	20	18
502o	Grace City..... "	24½	20	18	24½	20	18
502p	Brantford..... "	24½	20	18	24½	20	18
502q	*Dundas..... "	24½	20	18	24½	20	18
502r	New Rockford..... "	24½	20	18	24½	20	18
502s	*Munster..... "	24½	20	18	24½	20	18

*No Agent. Freight charges must be prepaid.

See note Sp 14

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[fol. 79] DEFENDANT'S EXHIBIT 5

Great Northern G. F. O. 1240-C, I. C. C. No. A-5348

Effective November 18, 1921, in Supplement Number 1

Rule 2-A Cancels Rule 2. Freight Rate Applicable: These rules and charges will apply whether shipments are handled at local rates, joint rates, or combination of intermediate rates. The through rate to be applied under these rules is the rate from point of origin via the diversion, reconsigning or reforwarding point to final destination in effect on date of shipment from point of origin. If the rate from original point of shipment to final destination is not applicable through the point at which the car is diverted, reconsigned or reforwarded, in connection with this line, the tariff rates in effect to and from the diversion, reconsigning or reforwarding point will apply, plus diversion or reconsigning charge. (See Note.)

NOTE.—Interstate traffic moving between Minot, N. D., or points west thereof and points on G. N. Ry. lines, Surrey, N. D., to St. Paul, Minneapolis and Minnesota Transfer, Minn., or beyond, will come under the application of this rule allowing diversion or reconsignment in transit when handled via the line through Devils Lake, Grand Forks and Fargo, N. D., as well as via the lines through New Rockford, Casselton, N. D., Breckenridge and Willmar, Minn., or Fargo, N. D., Fergus Falls and St. Cloud, Minn., providing no backhaul is involved.

(Endorsed:) Filed Apl. 19, 1929. Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

DEFENDANT'S EXHIBIT 6

Great Northern G. F. O. 1250-D, I. C. C. A-5712

Effective September 23rd, 1923, in Supplement No. 12

Application of Rates

*Directing Route.—The rates in this tariff, as amended, applying locally between points on the Great Northern Ry.,

---

* Change other than advance or reduction.

or jointly with the Great Northern Ry., are only applicable over the shortest mileage of the Great Northern Ry. as shown in Great Northern Ry. Table of Distances No. 400-A, I. C. C. No. A-4089, supplements thereto or reissuse thereof, except as may be otherwise specifically provided or unless shipments are otherwise handled for carrier's convenience.

[fol. 80] (Endorsed:) Filed Apl. 19, 1929. Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

DEFENDANT'S EXHIBIT 7

Statement Showing from Points on Great Northern Ry. from Which Actual Shipments of Grain Moved to Minneapolis, Minnesota, and were Subsequently Reconsigned to Superior, Wisconsin

1. Shortest mileage via direct route to Superior, Wis.
2. Shortest mileage via Minneapolis to Superior, Wis.
3. Additional mileage route via Minneapolis compared with direct route.

	Shortest mileage to Superior, Wisc.		Additional mileage via Minneapolis	
Point of origin	Direct route	Via Minneapolis	Miles	Per cent
Angus, Minnesota	298.4	456.3	166.9	57
Beltrami, Minnesota	282.5	417.2	134.7	48
Buxton, No. Dak.	318.1	430.2	112.1	35
Inkster, No. Dak.	339.4	485.3	145.9	43
Mentor, Minnesota	239.8	473.8	234.0	98

(Endorsed:) Filed Apl. 19, 1929. Joel M. Dickey, Clerk, by Thomas H. Howard, Deputy.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 81] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 8821

GREAT NORTHERN RAILWAY COMPANY, Appellant,

vs.

DELMAR COMPANY, Appellee

STIPULATION AS TO PRINTING RECORD—Filed Feb. 3, 1930

It is hereby stipulated and agreed by the parties hereto, by their respective counsel, that pages 39 and 43 of defendant's Exhibit No. 4, which is a tariff filed with the Interstate Commerce Commission consisting of 58 pages and 5 supplements, are the only portions of said Exhibit No. 4 which need be reproduced and included in the transcript of record by the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, for the reason that said pages, which show the rates on grain from Kerkhoven, Halloway and Appleton, Minnesota, and from Howes, North Dakota, to Superior, Wisconsin, claimed by plaintiff as applicable to its shipments from Kerkhoven, Halloway and Appleton to Superior, are typical of the manner and form in which the said tariff Exhibit No. 4 shows all of the rates from the country stations to Superior which plaintiff contends were applicable to its shipments involved in this proceeding.

It is further hereby stipulated and agreed that the only portion of defendant's Exhibit No. 3, which is a blue print map, which need be reproduced and included in the transcript of record is that including the states of Minnesota, [fol. 82] North Dakota and South Dakota, and the eastern edge of Wisconsin, including Superior, as the other portions of said map are immaterial to any issue in this proceeding.

Dated this 31st day of December, 1929.

F. G. Dorety, R. J. Hagman, J. H. Mullally, Attorneys for Appellant. Shaw, Safford, Putman & Shaw, Attorneys for Appellee.

[File endorsement omitted.]

[fol. 83] Appearances of counsel omitted in printing.

[fol. 84] Minute entry of argument and submission, May 20, 1930, omitted in printing.

[fol. 85] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, MAY TERM, A. D. 1930

No. 8821

GREAT NORTHERN RAILWAY COMPANY, Appellant,

vs.

DELMAR COMPANY, Appellee

Appeal from the District Court of the United States for the District of Minnesota

Mr. R. J. Hagman (Mr. F. G. Dorety and Mr. J. H. Mulally were with him on the brief) for appellant.

Mr. Fred W. Putnam (Mr. Frank W. Shaw, Mr. Orren E. Safford, Mr. Wilbur D. Shaw and Mr. Sam W. Campbell were with him on the brief) for appellee.

Before Stone and Van Valkenburgh, Circuit Judges, and Scott, District Judge

OPINION—Filed Sept. 13, 1930

STONE, Circuit Judge, delivered the opinion of the court.

This is an action to recover reparation for a freight overcharge. The matter was first presented to the Interstate Commerce Commission which found there had been an overcharge and declared reparation. The railway, having failed to pay the amount found due by the Commission, the present suit resulted. From the judgment according reparation this appeal is brought.

The facts here are not in dispute and are as follows: These shipments were of carloads of grain originating on various points in Minnesota, North and South Dakota,

upon the line of appellant. All of them were consigned to Minneapolis and there later sent (by reconsignment without breakage of bulk in the same cars) to Superior, [fol. 86] Wisconsin. Appellant had in force rate tariffs prescribing certain rates from the points of origin of these shipments to Superior, rates to Minneapolis and "proportional" rates from Minneapolis to Superior. In the instance of each shipment there was a shorter mileage route from the point of origin to Superior and in each instance the rate to Superior was less than the combination of the rate to Minneapolis plus the proportional rate from Minneapolis to Superior. The tariffs covering rates from the points of origin to Superior did not indicate that such rates were upon any particular route. The distances from the points of origin to Superior via Minneapolis were greater than those direct from points of origin to Superior—the greatest divergence being twenty-three per cent. These shipments originated west or north of west of Minneapolis and Superior is north and slightly east of Minneapolis. The carrier applied the Minneapolis plus the proportional Superior rate to these shipments, thus, making a higher charge than the rates applying from points of origin to Superior direct It is for this difference in charge that this action is brought.

The issues here involved have to do with the proper construction of this tariff. Several points have been briefed and argued but they may be resolved into two questions. The first is whether a rule of tariff construction repeatedly announced by the Commission and applied in this case is lawful and proper, and, second, whether the Commission properly applied that rule to the facts of this case.

I

The rule of construction employed by the Commission is that where there is more than one route from a point of origin to destination, a rate between those points applies to a shipment over any one of those routes unless that route is unreasonably circuitous or unless the carrier has limited the rate in the tariff to a particular route designated therein. This rule has been repeatedly announced and applied by the Commission (Mason Bros. v. S. Pac. Co., 28 I. C. C. 402; Van Dusen Harrington Co. v. C. M.

& St. P. Ry. Co., 47 I. C. C. 59; Leeds L. Co. v. Director General, 59 I. C. C. 243; Freeman Grain Co. v. Director General, 68 I. C. C. 559; Pioneer L. Co. v. Director General, 74 I. C. C. 288; Baker-Reid L. Co. v. B. & O. R. R. Co., 74 I. C. C. 489; Richardson Sand Co. v. Director General, 89 I. C. C. 555; Steinhardt & Kelly v. Erie R. R. Co., 96 I. C. C. 229; Scott County Farm Bureau v. A. & V. Ry. [fol. 87] Co., 101 I. C. C. 357; Browne-Hinton Wholesale Grocery Co. v. Great Northern Ry. Co., 102 I. C. C. 237; Northwestern Fruit Exchange v. Great Northern Ry. Co., 128 I. C. C. 538; Atwood Davis Sand Co. v. C. N. W. R. Co., 136 I. C. C. 471). Where a departmental ruling or construction has been of long standing and application it should be accepted unless "plainly wrong" (Universal Battery Co. v. United States, 281 U. S. —; Brewster v. Gage, 280 U. S. 327, 336; United States v. Jackson, 280 U. S. 183, 193; Luckenbach S. S. Co. v. United States, 280 U. S. 173, 182). This is particularly true where the subject matter of the regulation requires uniformity and is technical in character—as are railway rate tariffs—(Board of R. R. Comm. v. Great Northern Ry. Co., 281 U. S. —). The rule of tariff construction involved here is firmly established in statement and application by the Commission (cases first above cited). It should not be set aside or disregarded unless clearly opposed to law or unreasonable. The reasoning creating the rule is that the carrier may, if it has a particular route in mind for a particular tariff, easily express its intention in the tariff; that not to do so, leaves the tariff difficult of construction for the shipper and the local agent of the carrier; that in opening the door for more than one meaning the tariff creates a situation where different interpretations by different local agents might result in discrimination between shippers. The reasoning impresses us as being essentially sound. Therefore, the rule of construction of the Commission should be and is approved.

The insistence of the carrier that its intention and its custom of sending direct shipments otherwise than through Minneapolis does not have any weight when applied to the above rule of construction because tariffs "are construed according to their language, and the intention of the framers is not controlling" (Baker-Reid L. Co. v. B. & O. R. R. Co., 74 I. C. C. 489, 491; also see Charles Boldt

Co. v. P. C. C. & St. L. Ry. Co., 42 I. C. C. 308, 310), and a custom of routing by the carrier is not material (Kentucky L. Co. v. St. L.-San F. Ry. Co., 51 I. C. C. 203, 204). The carrier could easily have protected itself from any doubt by merely stating its intention in the tariff and, thus, accomplish its result without any uncertainty or confusion.

The contention of the carrier that to adopt the above rule as applied to these facts would result in a violation of the "long and short haul" clause of Section 4 of the [fol. 88] Interstate Commerce Act (U. S. C. A. Title 49, Section 4) is not well made. That section applies to "the same line or route in the same direction, the shorter being included within the longer distance". As to these shipments, the shorter haul is not included within the longer distance. The question here is as to different routes between the same termini. The evil which that section was intended to do away with is well known and it had nothing to do with a situation such as is here presented. The construction contended for would take away all power of the carrier to select a choice of routes between the same termini unless it made a difference in the rate. It is clear that such a choice is very often to the advantage both of the carrier and the shipping public; that there could be no useful purpose in forbidding such a choice and that it was not the intention of the above section to announce a prohibition of this character.

II

The Commission is supported by substantial evidence in its determination of the facts in this case. The above rule has application only to routes which are reasonably circuitous. It is obvious that what is reasonable, in the above sense, is dependent upon circumstances. Here, the facts are that the movement on the shortest or on the longest routes involved was always away from the point of origin and near to the point of ultimate destination (Superior, Wisconsin), and that the longer route was a thoroughly feasible, workable route which the carrier might and could easily use. The greatest mileage divergence of any of these shipments was twenty-three per cent (see Scott County Farm Bureau v. A. & V. Ry. Co.,

101 I. C. C. 357, where one route was about three times as long as the most direct route).

Conclusion

The judgment of the trial court should be and is affirmed.

[fol. 89] In United States Circuit Court of Appeals, Eighth Circuit

No. 8821

Great Northern Railway Company, Appellant,

vs.

Delmar Company.

Judgment—September 16, 1930

Appeal from the District Court of the United States for the District of Minnesota

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that the Delmar Company have and recover against the Great Northern Railway Company the sum of Twenty Dollars for its costs herein and have execution therefor.

[fol. 90] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 91] Supreme Court of the United States

Order Allowing Certiorari—Filed January 19, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,485. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 563. Great Northern Railway Company, petitioner, vs. Delmar Company. Petition for a writ of certiorari and exhibit thereto. Filed November 24, 1930. File No. 35,485.

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